

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**VOTER REFERENCE FOUNDATION,  
LLC,**

Plaintiff,

v.

**RAÚL TORREZ**, in his official  
capacity as New Mexico Attorney General,

and

**MAGGIE TOULOUSE OLIVER**, in her  
Official capacity as New Mexico  
Secretary of State,

Defendants.

**CASE NO: 1:22-cv-00222-JB-KK**

**JOINT TRIAL DEPOSITION DESIGNATIONS AND OBJECTIONS**

Plaintiff Voter Reference Foundation, LLC (“VRF” or “Plaintiff”) and Defendants Attorney General Raul Torrez and Secretary of State Maggie Toulouse Oliver (“Defendants”), pursuant to the Joint Pretrial Order [Dkt. 152] and D.N.M.LR-Civ. 10.6, designate the following deposition testimony, subject to the listed objections for this Court’s consideration.

<b>Mandy Vigil</b> February 27, 2023  <b>Plaintiff’s Designations</b>		<b>Defendants’ Objection</b>	<b>Plaintiff’s Response</b>
<b>Beginning</b>	<b>Ending</b>		
5:7	6:1		
13:11	13:17		
19:22	20:4		
20:5	21:1		
25:5	25:20		
28:14	29:1		
30:15	30:19		

30:20	31:4		
35:18	36:4		
52:23	53:13		
54:24	55:6		
55:17	55:24		
55:25	56:7		
56:8	56:13		
57:3	57:22		
65:23	65:25		
72:17	73:1		
74:9	75:6		
75:22	76:9		
76:10	78:19	<p>77:23 Misstates prior testimony, foundation; 78:12 foundation:</p> <p>The question posed at 77:17-22 purports to restate Ms. Vigil's prior testimony but does not do so.</p>	<p>VRF's question clarifies Mrs. Vigil's testimony and gives her an opportunity to respond-it does not purport to restate prior testimony verbatim. To the extent that Mrs. Vigil felt the question did not accurately state the Secretary's position, she was invited to explain.</p>
79:11	80:5		
82:11	82:12		
83:1	83:2		
84:9	84:12		
84:13	85:11		
88:17	89:24	<p>89:18 Relevance:</p> <p>Hypothetical and counterfactual questions are not relevant. VRF's burden is to produce evidence of actual disparate treatment, not hypothetical disparate treatment.</p>	<p>The testimony in this excerpt concerns hypothetical situations which shed light on the Secretary of State's positions regarding the sharing of voter data. These positions are highly relevant to VRF's First Amendment claims because they show the Secretary's reasons for denying VRF's requests for New Mexico voter data are pretextual. Additionally, the Secretary's answers to these questions are relevant to VRF's vagueness and overbreadth claims because they show the deficiencies of the Data Sharing Ban.</p>
93:17	94:1		
97:19	98:11	98:4 Relevance:	<p>The testimony in this excerpt concerns hypothetical situations which shed light on the Secretary</p>

		Hypothetical and counterfactual questions are not relevant. VRF's burden is to produce evidence of actual disparate treatment, not hypothetical disparate treatment.	of State's positions regarding the sharing of voter data. These positions are highly relevant to VRF's First Amendment claims because they show the Secretary's reasons for denying VRF's requests for New Mexico voter data are pretextual. Additionally, the Secretary's answers to these questions are relevant to VRF's vagueness and overbreadth claims because they show the deficiencies of the Data Sharing Ban.
99:22	101:16	100:1 Relevance; 100:12 Relevance; 101:3 Relevance:  There is no agreement that must be signed, there is a click-through. VRF has not raised as a defense to violations of the election code that the click-through shields them from criminal liability, nor have Defendants insinuated as much.	This testimony concerns the contents of VRF's website and the agreement users must sign in order to view voter data on VRF's website. As such, it is highly relevant to Defendants' purported justifications for denying VRF's requests for New Mexico voter data.
102:13	102:18		
105:7	105:11		
106:24	107:6		
108:4	108:17		
109:11	110:6		
110:7	111:6		
112:1	112:5		
113:6	113:22		
113:23	114:13	114:6 Calls for speculation; Relevance:  The question asks for a legal opinion regarding a hypothetical invented by counsel.	The referenced question asks for the Secretary of State's knowledge of the legality of other entities' use of voter data which is highly relevant to showing that the Secretary of State's reasons for denying VRF's requests for New Mexico voter data are pretextual.
116:6	117:3		

118:5	118:16		
119:19	120:1		
121:2	121:17		
121:18	122:6	<p>121:21 Calls for speculation; Relevance:</p> <p>The question was “maybe one day somebody will check out one of the websites and understand what they do with their data.” This calls for speculation about the both the identity of the investigator and the presumed result of the investigation.</p>	<p>This questioning concerns what is necessary for the Secretary of State’s office to conduct an investigation into an entity for violating the election code. If the Secretary of State does not know and must “speculate,” that is relevant to show that the Secretary of State’s office is not treating all entities requesting voter data equally.</p>
122:18	122:22		
123:12	124:16		
124:24	125:13		
126:9	127:4		
128:19	129:6		
129:7	129:17		
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178:21	179:20		
179:21	180:16		
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182:17	184:3		
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187:11	187:15		
187:21	188:23		
188:24	189:6		
190:1	190:5		
190:6	191:13		
194:25	195:25		
197:8	197:20	<p>Improper form: commentary of counsel, not a question:</p> <p>All objections other than to form and foundation are preserved. If VRF wished to have all objections raised and resolved as they arose during testimony, VRF could have done so. Having failed to do so, VRF is not permitted to enter as evidence extensive commentary of counsel.</p>	<p>Defendants failed to apprise VRF of the reason for their objection during the deposition, thereby depriving VRF of a chance to cure any perceived infirmities with that question. As such, this objection is waived.</p> <p>Defendants' acknowledge that objections to form are not preserved.</p> <p>Additionally, there is no such federal "trial deposition" rule which Defendants seem to invoke.</p>
198:6	198:8		

<b>Mandy Vigil,</b> February 27, 2023 <b>Defendants' Designations</b>	
Begin	End
74:5	74:8
136:16	137:20
192:8	192:20



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Mandy Vigil  
February 27, 2023

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Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.

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## A P P E A R A N C E S

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MANDY VIGIL,

having been first duly sworn to tell the truth,  
the whole truth, and nothing but the truth,  
testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY MR. EDWARD D. GREIM:

Q. Good morning, Ms. Vigil. Good to see you  
again. Rather than going through all the  
background questions, which we've already done  
with you before, I would just ask you, has --  
has anything about your background changed  
since we last spoke back in the summer of last  
year?

A. No.

Q. Okay. You have the same job title?

A. I do.

Q. You have the same duties?

A. I do.

Q. No additional classes or expertise since that  
time?

A. No.

Q. Okay. Now, I understand that, unlike your  
prior testimony, you're here today to answer  
questions on behalf of the secretary of state's  
office, do you understand that?

2 (Pages 2 to 5)

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1 record just real fast?

2 MR. GREIM: Okay. Sure.

3 (WHEREUPON, at this time a discussion was

4 held off the record.)

5 BY MR. GREIM:

6 Q. So let me ask you, Ms. Vigil, have you studied

7 yet the responses to Interrogatories 10

8 through 17? Have you seen these responses

9 before?

10 **A. No.**

11 Q. Okay. So have you -- have you verified their

12 accuracy?

13 **A. No, I haven't.**

14 Q. Well, then, I think we're going to have to

15 wait. You're going to need to read these and

16 see if you agree with them. And if you do,

17 then, you know, we'll need a sworn response.

18 If you don't agree with them, I guess we'll

19 need revisions to whatever you want to change.

20 **A. Okay.**

21 Q. So you -- you can't tell us that these are

22 really the responses of your office, is that

23 correct?

24 **A. Not without reading them.**

25 Q. Okay. I'm going to direct you to certain

Page 11

1 statements in here as we go and I'm going to

2 ask for your position on these. Let me ask

3 you, during your prep for today, you did not

4 review these responses?

5 **A. I have not reviewed these yet, no.**

6 MR. GREIM: Okay. We're back on record,

7 correct?

8 THE COURT REPORTER: Yeah.

9 BY MR. GREIM:

10 Q. Okay. Well, I'll just ask you about certain

11 things in here and we'll see if you agree, and

12 if you don't, we'll just -- we'll just revisit

13 it. But this will be the fastest way, I think,

14 to handle this. And I know they look like

15 they're long, but most of these start with an

16 objection and then the answer starts lower

17 down.

18 And so I'm not going to take you through

19 the objection. I'm going to focus on the

20 provision of actual information here. But I'm

21 glad we did that here at the outset. Let's put

22 these aside. We'll come back to them in a

23 little bit when we get into specific topics.

24 Let me just ask you, what's the secretary

25 of state's role in collecting voter data?

Page 12

1 **A. So the secretary of state's office is**

2 **responsible for maintaining a statewide voter**

3 **registration database, and that includes all of**

4 **the voter data.**

5 Q. Where does the voter data come from?

6 **A. Comes from voter registration applications that**

7 **are submitted by an individual and processed by**

8 **a county clerk.**

9 Q. Okay. Who has access to that database?

10 **A. All election administrators within the state of**

11 **New Mexico have access, so secretary of state's**

12 **office, there are certain individuals, and**

13 **county clerk offices.**

14 Q. Does anyone else have access to the database,

15 like a code to get in and view information or

16 alter data?

17 **A. No.**

18 Q. But I ask you that, it may seem like an odd

19 question, but in some states they give out

20 something that they call key codes or things

21 like that, they give out a certain number of

22 those. And that's within the discretion of the

23 county clerk to then distribute those. So

24 not -- not everybody who gets them is actually

25 a government official. So my question is, do

Page 13

1 you know if that happens in New Mexico?

2 **A. No.**

3 Q. Did you --

4 **A. It does not happen in New Mexico.**

5 Q. It does not happen. Okay. Now, what about --

6 how does voting information get into the

7 database? By that I mean whether someone casts

8 a vote in an election.

9 **A. So you're asking, to be clear, on kind of voter**

10 **credit, is that the question?**

11 **Q. It may be. Is a voter credit a record that**

12 **someone voted in a particular election?**

13 **A. Yes. So if a voter participates in an**

14 **election, we assign what's called voter credit**

15 **in New Mexico. And that assignment is**

16 **completed by a county clerk's office. And**

17 **there are system functions that support that.**

18 Q. What do you mean that there are system

19 functions that support that?

20 **A. So there's data that's exchanged between our**

21 **databases. It's not always a manual process of**

22 **a human making that entry.**

23 Q. I see. So let's just -- I don't want to go too

24 much further, but I just want to understand the

25 database. So do you mean that, for example,

4 (Pages 10 to 13)



Page 18

1 **A. Certainly.**  
 2 Q. And that includes -- among all the other things  
 3 you just mentioned, it includes some voter data  
 4 from other states?  
 5 **A. Yes.**  
 6 Q. And New Mexico also shares its own data with  
 7 ERIC also, right?  
 8 **A. We do.**  
 9 Q. And that includes data that's in the database  
 10 that we've just been talking about, right?  
 11 **A. It does.**  
 12 Q. And I'm going to assume that ERIC does not fill  
 13 out an affidavit under the statutory process  
 14 that we're going to get to here in a minute, do  
 15 they?  
 16 **A. We have a membership agreement that we did**  
 17 **enter into with ERIC.**  
 18 Q. And there's a statute that actually allows for  
 19 that, right?  
 20 **A. Correct.**  
 21 Q. Okay. When you receive these list maintenance  
 22 reports from ERIC, do you retain them?  
 23 **A. That -- that's actually a function of our IT**  
 24 **department, so -- I know we don't maintain them**  
 25 **long-term.**

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1 Q. Can the public request the list maintenance  
 2 reports?  
 3 **A. No.**  
 4 Q. They're closed records under New Mexico law?  
 5 **A. That is a good question. I would have to**  
 6 **double check the exact language of the law.**  
 7 **But it's certainly a requirement of our**  
 8 **membership agreement.**  
 9 Q. Okay.  
 10 **A. There's MVD data that's included, and that is**  
 11 **protected under federal law as well as SSD --**  
 12 **security --**  
 13 Q. What is --  
 14 **A. We have MVD data and social security**  
 15 **information, so there are separate laws that**  
 16 **protect that data.**  
 17 Q. What's MVD data?  
 18 **A. Sorry, motor vehicle division.**  
 19 Q. From other states, right?  
 20 **A. Yes.**  
 21 Q. And yours, okay.  
 22 **By the way, this is probably a**  
 23 **fundamental question, but we should just do it**  
 24 **now. Tell us, your answers to questions here**  
 25 **suggest there's really just one database that**

Page 20

1 **has -- that all of this information feeds into,**  
 2 **is that correct?**  
 3 **A. There is one statewide voter registration**  
 4 **database.**  
 5 Q. Okay. And for any given voter, what does  
 6 the -- what fields does the database contain?  
 7 **A. There are many fields for a voter. Certainly**  
 8 **demographic information, so name, date of**  
 9 **birth, social security number, in some cases**  
 10 **driver's license. We also maintain information**  
 11 **such as a party affiliation and any activity on**  
 12 **their voter registration record.**  
 13 Q. Those would be voter credits?  
 14 **A. In part, but also any updates to the**  
 15 **information.**  
 16 Q. What do you mean updates?  
 17 **A. If somebody was married and updated their name,**  
 18 **potentially, so we did a registration update.**  
 19 Q. I see. So the very fact that there was an  
 20 update is also tracked within the database?  
 21 **A. Correct.**  
 22 Q. That's viewed as activity?  
 23 **A. Correct.**  
 24 Q. And what if they move, is that also kept as  
 25 activity?

Page 21

1 **A. Updates to their record are logged.**  
 2 Q. Now, let me ask you, when someone makes a  
 3 request for the database, which elements of  
 4 that data is released -- are released? So  
 5 we've talked about name, date of birth. Tell  
 6 me what is released when someone requests a  
 7 voter file.  
 8 **A. So if a person goes through the appropriate**  
 9 **process to request a voter file --**  
 10 Q. Uh-huh.  
 11 **A. -- and we determine that it's for an**  
 12 **appropriate use, then voter data that's**  
 13 **provided would have requested information as**  
 14 **long as it wasn't protected. So the requester**  
 15 **has an option to request history, voter**  
 16 **history, or not. And they have choices in what**  
 17 **data they'd like to obtain. So it is dependent**  
 18 **on the request.**  
 19 Q. Okay. And -- but what they can never receive  
 20 is the full date of birth, correct?  
 21 **A. Anything that is protected, that's correct.**  
 22 Q. They can receive a year of birth?  
 23 **A. Yes.**  
 24 Q. They can't receive the full social security?  
 25 **A. No portion of the social security number.**

6 (Pages 18 to 21)

Page 22

1 Q. No portion. They can receive the party  
2 affiliation?

3 **A. Yes.**

4 Q. They can receive the credit information?

5 **A. They can.**

6 Q. And they can receive the history of updates,  
7 correct or no?

8 **A. No. That's just not included in a routine data  
9 request.**

10 Q. Okay. Well, are those closed to the public?

11 **A. I would actually -- I don't know that we've  
12 ever received an exact request. So that is  
13 something that we'd have to take a look at.**

14 Q. Okay. We don't need to probe much deeper.

15 **A. Yeah.**

16 Q. But I do want to put a bookmark on this in case  
17 it becomes relevant later. Nobody has -- no  
18 one has ever come to you and said, "I would  
19 like to just see the updates that you've made  
20 to the records over the last two months"?  
21 That's never come in?

22 **A. If you're asking me in particular about list  
23 maintenance.**

24 Q. Uh-huh.

25 **A. Is that the question?**

Page 23

1 Q. No, I -- let's just stick with my question.  
2 I'm not -- maybe we can come back to list  
3 maintenance, let's just stick with my question.  
4 Is it clear enough or is there something vague  
5 about it?

6 **A. There's something vague about it, I'm sorry.**

7 Q. Okay. What do I need to specify to help you  
8 get --

9 **A. If you can repeat the question --**

10 Q. Okay.

11 **A. -- that will be helpful.**

12 Q. So let me just ask you: Has anyone ever come  
13 to the secretary of state's office, let's just  
14 say in the last two years, and said, "I would  
15 simply like to see the activity reports" --

16 MR. GREIM: I'm sorry, are you able to  
17 hear us okay?

18 THE COURT REPORTER: Did you say activity  
19 reports?

20 MR. GREIM: Yes.

21 THE COURT REPORTER: Okay. We're good.

22 BY MR. GREIM:

23 Q. Okay. So has somebody come to you and said, "I  
24 would like to see the activity reports for the  
25 last three months for, you know, your entire

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1 database," has someone made that request of  
2 you?

3 **A. That's something I'd certainly have to confirm.  
4 As I mentioned earlier, it's not an option for  
5 a voter data request.**

6 Q. Okay.

7 **A. It would not have come through as a data  
8 request.**

9 Q. Okay. At the very least, this is not ringing a  
10 bell that this has happened any time recently,  
11 correct?

12 **A. Not to my knowledge.**

13 Q. And then who is in charge of the system, of  
14 maintaining the database and then responding to  
15 requests?

16 **A. As far as a voter data request, you know, I'm  
17 happy to repeat the process, but I think we've  
18 discussed that an affidavit would have to come  
19 in.**

20 Q. Oh, let me stop you. I'm just asking who is in  
21 charge. What employee is responsible within  
22 the secretary of state's office for list  
23 maintenance and fulfilling requests?

24 **A. So number one, the secretary of state's office  
25 does not have the authority to update voter**

Page 25

1 **registration records. So, though, we support  
2 the function of list maintenance, we do not  
3 update voter records directly in our office, by  
4 law.**

5 Q. Okay. Well, let me ask you this: For the  
6 functions that the secretary of state's office  
7 does control, is there a particular employee  
8 who is in charge of that section of the  
9 secretary of state's activity?

10 **A. As far as responding to a request, a general  
11 request, you know, we have a team, the Bureau  
12 of Elections, who is responsible for responding  
13 to constituent inquiries or requests.**

14 Q. And you're the director of the Bureau of  
15 Elections?

16 **A. Yes.**

17 Q. Is it fair to say you're the -- you're the  
18 person responsible for the process for  
19 fulfilling requests?

20 **A. For the process, yes.**

21 Q. And to the extent that you have a supporting  
22 role regarding list maintenance, that also  
23 falls under the Bureau of Elections and falls  
24 under you, correct?

25 **A. It does.**

7 (Pages 22 to 25)

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1 Q. Now, let me go back to a few questions ago  
2 before we -- we're going to move on in just a  
3 second here.

4 I asked you about people requesting  
5 updates and then you asked me about list  
6 maintenance. So I'm going to ask you: Is it  
7 possible to receive, from the secretary of  
8 state, list maintenance reports? Is it  
9 poss- -- let me rephrase that question.

10 Is it possible for a member of the public  
11 to request, from the secretary of state's  
12 office, list maintenance reports?

13 **A. We certainly have information in our database,  
14 but as I mentioned, you know, at first like the  
15 NVRA processing, list maintenance completed by  
16 ERIC, those are county clerk functions.**

17 Q. So the secretary of state doesn't have the  
18 data, you have to go to the county clerk to  
19 get it?

20 **A. I guess it depends on exactly what data you're  
21 asking me about. So that would be helpful to  
22 get some clarity.**

23 Q. Okay. Well, what are examples of data where  
24 you would be able to provide the answer to a  
25 request for a list maintenance report?

Page 27

1 **A. I think we certainly have access to voter data,  
2 as you are clear on. And as far as, you know,  
3 efforts completed at the county, we don't have  
4 a report that I could just pull. It's data  
5 that we have access to, but, again, it's not  
6 public facing report.**

7 Q. So the actual changes to the database in  
8 response to an ERIC report happen at the county  
9 level?

10 **A. Yes.**

11 Q. And are members of the public able to ask  
12 county officials for records of the list  
13 maintenance that they undertake based on ERIC  
14 reports?

15 **A. ERIC data is protected, whether it's asked for  
16 at the secretary of state's office or at the  
17 county level.**

18 Q. And I'm not -- let's see if we can  
19 differentiate between the actual ERIC data and  
20 the record that a change was made based on ERIC  
21 data. Do you understand the difference?

22 **A. Yes.**

23 Q. Okay. So can a member of the public ask a  
24 county official for a record of changes that  
25 were made due to receiving ERIC data?

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1 **A. Let me think. There is opportunities within  
2 the statute to request list maintenance data.**

3 Q. Now, does -- if someone cites the statute and  
4 says, "I want this maintenance data," and they  
5 ask the secretary of state for it, does the  
6 secretary of state have list maintenance data?

7 **A. What I can speak to -- you know, not this kind  
8 of hypothetical that you're presenting to me,  
9 but what I can certainly speak to is that our  
10 office would receive any request; we would  
11 review the statute; and we would make an  
12 analysis on what data was public and provide  
13 any data that was public.**

14 Q. Okay. I understand that you -- you would  
15 always do that. But my question is very  
16 specific. So there is a statute that says that  
17 list maintenance data can be requested, and the  
18 NVRA covers this as well. So my question is if  
19 somebody comes to the secretary of state, makes  
20 a proper request, there's an affidavit, they do  
21 everything they're supposed to do, does the  
22 secretary of state have list maintenance data  
23 that it can produce in response to requests?

24 **A. Our office does have list maintenance data that  
25 we would be able to produce if we received a**

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1 **legal request, an appropriate legal request.**

2 Q. Okay. And the other facts you would need to  
3 know on a given request is whether the things  
4 that make it a legal request. We'd have to --  
5 we'd have to give you all those facts, about  
6 who was requesting and what purpose they were  
7 requesting it for and all those things, right?

8 **A. I think we're speaking again -- just for  
9 clarity, are we speaking about a voter data  
10 request submitted or a separate request under  
11 NVRA or IPRA?**

12 Q. Well, I guess I would say this: What if the  
13 requester doesn't know whether it's an NVRA  
14 request or it's -- it's under your voter data  
15 request process and just says, "I would like a  
16 voter, you know -- I would like voter list  
17 maintenance data." I mean, there's no magic  
18 words required to cite the statute. I mean,  
19 they're citing the same. And so, I mean, I  
20 guess my question back to you is does it matter  
21 whether they cite the NVRA or whether they cite  
22 your state statute?

23 **A. I think that we would have to take any request,  
24 review the content, review, you know, the  
25 legal -- any statute that applies before we**

8 (Pages 26 to 29)

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1 could appropriately respond. That -- that  
 2 would be our process.  
 3 Q. Okay. We're going to spend a little more time  
 4 here before we move on. I want to understand  
 5 this. It sounds to me like in your penultimate  
 6 answer, you said, well, there are some requests  
 7 that come in for voter data under our state  
 8 law. Then there are other requests that come  
 9 in under NVRA; you're viewing those as two  
 10 separate groups. Do I understand you  
 11 correctly?  
 12 A. I don't think they're always two separate  
 13 groups, but we do receive separate requests,  
 14 yes.  
 15 Q. Okay. Okay. And you would agree that under  
 16 the NVRA, I mean, you have to provide voter  
 17 list maintenance data when someone makes a  
 18 request under the NVRA, correct?  
 19 A. I agree.  
 20 Q. And does someone making that request have to  
 21 follow the voter data request statutes under  
 22 New Mexico law and use the required affidavit  
 23 of the secretary of state's office?  
 24 A. Yes. Anytime a requester is asking us to  
 25 receive voter data, state law requires that

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1 they complete the affidavit.  
 2 Q. And voter list maintenance data is voter data,  
 3 correct?  
 4 A. Voter list maintenance is voter data, yes.  
 5 Q. Okay. Okay. Would you agree with me that  
 6 personal voter data are things like name of the  
 7 voter or the birth year for the voter, data  
 8 that specifically ties to an individual voter,  
 9 if I use the term personal voter data?  
 10 A. That term is not defined, to my knowledge.  
 11 Q. Okay.  
 12 MS. SCHREMMER: Are you asking her to  
 13 define a term for you, or are you telling her  
 14 the term you're about to use in your  
 15 questioning?  
 16 MR. GREIM: No, I was asking her.  
 17 BY MR. GREIM:  
 18 Q. So if I just said personal voter data, that  
 19 means nothing to you whatsoever? It's  
 20 completely useless as a descriptor of types of  
 21 data in the voter database?  
 22 A. Yeah.  
 23 Q. Okay. Okay. I'm going to shift gears here for  
 24 a second. One of our topics for today is just  
 25 the secretary's public statements about -- I

Page 32

1 think it -- let me just make sure I'm right  
 2 about this. Yeah. Statements that are made  
 3 either by the secretary or her agents regarding  
 4 VRF, request for or uses of voter data, or this  
 5 lawsuit.  
 6 And so let me ask you before we turn in  
 7 to this topic, what did you do to prepare for  
 8 yourself for that today?  
 9 A. I did not do anything in particular to prepare  
 10 for the item.  
 11 Q. Okay. Well, let's just charge into it. Would  
 12 you agree that any statement that gets issued  
 13 by the office is made with the approval of the  
 14 secretary of state?  
 15 A. What I can speak to is that process within the  
 16 secretary of state's office is that we  
 17 certainly -- you know, as a leadership team we  
 18 meet, we speak about current events within the  
 19 office. And we speak to any sort of messaging  
 20 that's appropriate for what's currently going  
 21 on. So certainly there's an understanding of  
 22 the correct and appropriate message, but there  
 23 is not a particular approval of each statement  
 24 made.  
 25 Q. Who's in this leadership team that meets to

Page 33

1 talk about statements?  
 2 A. I mean, it's any director within the office of  
 3 the secretary of state's office.  
 4 Q. So that's you?  
 5 A. Me.  
 6 Q. Alex Curtas?  
 7 A. Alex is our communications director.  
 8 Q. He would always be in those discussions,  
 9 correct?  
 10 A. Any time there's messaging, Alex is  
 11 participating, yes.  
 12 Q. Okay. The secretary?  
 13 A. Yes, as far as that group.  
 14 Q. Sharon Pino?  
 15 A. Yes. Dylan Lange.  
 16 Q. Who else?  
 17 A. I don't know that anyone else is relevant to  
 18 this topic, but we also have our director of  
 19 our business services, and our deputy directors  
 20 participate in those weekly leadership calls.  
 21 Q. Oh, I see. Those are phone calls?  
 22 A. Or meetings.  
 23 Q. Let me ask you: Who -- I assume that before a  
 24 statement goes out, there's a draft prepared  
 25 and people have a chance to look at it?

9 (Pages 30 to 33)

1 **A. That is true in some instances but not always.**  
 2 Q. Okay. Who usually prepares the draft of the  
 3 statement?  
 4 **A. Alex.**  
 5 Q. And then it gets -- do you communicate by  
 6 e-mail, or does he prepare a memo that gets  
 7 given around the office, you know, physically?  
 8 How does he communicate that to the team?  
 9 **A. Yeah, it depends. So it depends on what -- you**  
 10 **know, the timeline of what needs to get**  
 11 **accomplished. It depends on availability. So**  
 12 **it -- I'm happy to speak to a certain instance.**  
 13 **But generally Alex is the primary source for**  
 14 **any communication from our office. There is a**  
 15 **team that participates in kind of ensuring that**  
 16 **our messaging is correct. But Alex, at the end**  
 17 **of the day, executes those messages.**  
 18 Q. Let's go back to the Exhibit 2, because we  
 19 tried to get the answer to this question by  
 20 interrogatory. If you could go to page 10,  
 21 it's Interrogatory Number 16. I sure wish she  
 22 would have stapled these. I know, this was my  
 23 fault, I meant to say clip and then staple the  
 24 individual. Okay. So Number 16 says,  
 25 "Identify each person involved in drafting,

1 revising, approving, and sending each public  
 2 statement or statement to a member of the media  
 3 relating to VRF or relating to the lawsuit that  
 4 was made by (i) the secretary, and (ii) Alex  
 5 Curtas." That's the request.  
 6 Then the response, "Subject to, and  
 7 without waiving objections, the secretary  
 8 states Alex Curtas, the communications  
 9 director, drafted public statements or  
 10 statements to a member of the media relating to  
 11 VRF or this lawsuit, which would have been  
 12 approved by Sharon Pino or the secretary.  
 13 Ultimately, the secretary makes the final  
 14 decision with respect to what information is  
 15 provided in a public statement."  
 16 Did I read that correctly?  
 17 **A. Let me just read it again.**  
 18 **Q. Sure. My question is going to be whether you**  
 19 **agree with that response.**  
 20 **A. To be clear, my answer to your question is that**  
 21 **we do have a process and we do participate as a**  
 22 **leadership team. And I agree that the**  
 23 **secretary or the deputy secretary of state will**  
 24 **always be involved in messaging; meaning that**  
 25 **we are providing the appropriate public message**

1 **and that we are all clear and on the same page**  
 2 **as to what that message is. And so I agree**  
 3 **that they would have knowledge of, generally,**  
 4 **our message to the public.**  
 5 Q. Okay. Now, of course, this is a really  
 6 specific interrogatory. I'm not just asking  
 7 about your process always. We were trying to  
 8 find out about statements to the media relating  
 9 to VRF or the lawsuit that were made by the  
 10 secretary or by Alex Curtas. We've got those,  
 11 okay. So I want you to limit it to that. All  
 12 right.  
 13 And so here is my question: I mean, do  
 14 you agree with the statement that's typed up as  
 15 the response here, or would you change it?  
 16 **A. I think it would be helpful is to understand,**  
 17 **you know, the exact message that we're speaking**  
 18 **about. I agree that Alex would have drafted.**  
 19 **I agree that there would have been**  
 20 **conversations supporting the message and**  
 21 **clarity as to our position on this lawsuit and**  
 22 **our public messaging. As far as each**  
 23 **individual, you know, statement, it would be**  
 24 **important to understand what statement I'm**  
 25 **answering to.**

1 Q. I see. So you -- so the very last sentence is  
 2 the one that's most important to me and that  
 3 could save us some time if it were true. It  
 4 says, "Ultimately, the secretary makes the  
 5 final decision with respect to what information  
 6 is provided in a public statement." Is that  
 7 true?  
 8 **A. And I think it's, to be clear, as far as the**  
 9 **statement, the message, the response, that is**  
 10 **true. As far as the exact words in a media**  
 11 **release, it would be something that we'd have**  
 12 **to look at each individual request. I agree**  
 13 **that she would certainly participate in the**  
 14 **decision about the public message and that Alex**  
 15 **would have drafted it. Ultimately, yes, she**  
 16 **has an understanding and would approve our**  
 17 **public message. I am not speaking to each**  
 18 **individual statement and each word in that**  
 19 **statement.**  
 20 Q. Okay. Well, what about with respect to what  
 21 information is provided in a public statement,  
 22 do you agree that the secretary makes the final  
 23 decision on what information is provided in a  
 24 public statement?  
 25 **A. And when you say "information," can you**



<p style="text-align: right;">Page 50</p> <p>1 on. I didn't hear, I missed a part of it. And</p> <p>2 the fact that voters would be intimidated and</p> <p>3 cause them to what? To want to --</p> <p>4 THE WITNESS: To de-register and not</p> <p>5 participate in our process. That is a fact</p> <p>6 that our office was contacted by voters with</p> <p>7 those exact concerns and requests.</p> <p>8 MR. GREIM: I move to strike that answer</p> <p>9 as non-responsive.</p> <p>10 BY MR. GREIM:</p> <p>11 Q. Okay. Let's just move on to some other topics</p> <p>12 here. Well, let me ask you this: I may --</p> <p>13 <b>A. May I ask for a restroom break?</b></p> <p>14 MR. GREIM: Yeah, why don't we. We've</p> <p>15 been going for a little while.</p> <p>16 Okay. We're going to go off the record</p> <p>17 for five to ten minutes and come back and keep</p> <p>18 charging ahead.</p> <p>19 (WHEREUPON, at this time a brief recess</p> <p>20 was taken.)</p> <p>21 MR. GREIM: Before we begin -- resume</p> <p>22 questioning of the witness, we just have a</p> <p>23 stipulation to enter onto the record. And why</p> <p>24 don't you -- since you're the stipulator, why</p> <p>25 don't you say it.</p>	<p style="text-align: right;">Page 52</p> <p>1 THE COURT REPORTER: Posting of what?</p> <p>2 Q. Okay. And who --</p> <p>3 THE WITNESS: I'm sorry, posting online.</p> <p>4 BY MR. GREIM:</p> <p>5 Q. Okay. And this was signed by Sharon Pino,</p> <p>6 correct?</p> <p>7 <b>A. It is.</b></p> <p>8 Q. And you were present when I questioned Ms. Pino</p> <p>9 some months ago about this referral, do you</p> <p>10 recall that?</p> <p>11 <b>A. I was present?</b></p> <p>12 Q. Well, actually, maybe you weren't, because it</p> <p>13 was on my -- you may not have been around for</p> <p>14 that. Okay, we'll strike that.</p> <p>15 Now, we have asked the secretary of state</p> <p>16 who participated in the decision to make this</p> <p>17 referral. Okay, so keep your finger on</p> <p>18 Exhibit 4, but go back please to Exhibit 2, the</p> <p>19 interrogatory responses. And turn to page 8,</p> <p>20 please. We're going to go between pages 8 and</p> <p>21 9.</p> <p>22 <b>A. Okay.</b></p> <p>23 Q. And we asked the secretary to identify each</p> <p>24 person who participated in the decision to make</p> <p>25 a criminal referral of VRF, and the person, if</p>
<p style="text-align: right;">Page 51</p> <p>1 MS. LECOCQ: Sure. The State is</p> <p>2 stipulating -- well, I'll just let you do it.</p> <p>3 MS. SCHREMMER: In Exhibit 3, and it's</p> <p>4 physical page 4, there is a quote attributed to</p> <p>5 Toulouse Oliver that begins, "This is an</p> <p>6 overtly political purpose." And we're</p> <p>7 stipulating that we do not have any reason to</p> <p>8 believe this is a misquote.</p> <p>9 MR. GREIM: Okay. Thank you very much.</p> <p>10 BY MR. GREIM:</p> <p>11 Q. Okay. We're going to shift gears now and we're</p> <p>12 going to talk a little bit about the criminal</p> <p>13 referral. So what are we on now, 4?</p> <p>14 <b>A. Yes.</b></p> <p>15 (WHEREUPON, Deposition Exhibit 4 was</p> <p>16 marked for identification.)</p> <p>17 BY MR. GREIM:</p> <p>18 Q. I'm going to hand you what we're marking as</p> <p>19 Exhibit 4. And I'm going to ask you if you</p> <p>20 recognize this document.</p> <p>21 <b>A. I do.</b></p> <p>22 Q. What is it?</p> <p>23 <b>A. This is the referral that our office made to</b></p> <p>24 <b>the attorney general's office related to Voter</b></p> <p>25 <b>Reference Foundation's posting of the data.</b></p>	<p style="text-align: right;">Page 53</p> <p>1 any, who made the final decision. And then we</p> <p>2 asked certain things about each one of those.</p> <p>3 So that's the question. And then if you turn</p> <p>4 to page 9, you'll see there's an objection that</p> <p>5 it's privilege, and then there's a little</p> <p>6 paragraph at the end that says "Without</p> <p>7 waiving, and subject to those objections, the</p> <p>8 secretary states that Sharon Pino, deputy</p> <p>9 secretary of state, made the decision to make</p> <p>10 the criminal referral, which was reviewed and</p> <p>11 approved by the secretary."</p> <p>12 Now, is that a true statement?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. My question is: Who else was involved</p> <p>15 in the decision?</p> <p>16 MS. LECOCQ: Objection to the extent that</p> <p>17 any of this involved discussion with counsel,</p> <p>18 with Mr. Lange.</p> <p>19 BY MR. GREIM:</p> <p>20 Q. Well, my -- okay, left's start with Mr. Lange.</p> <p>21 Let's get this out of the way. Was Mr. Lange</p> <p>22 involved in the decision?</p> <p>23 MS. LECOCQ: Objection. You can go ahead</p> <p>24 and answer.</p> <p>25 <b>A. Okay. Yes.</b></p>

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1 BY MR. GREIM:  
 2 Q. Okay. Let's put him to one side. Who else was  
 3 involved in the decision?  
 4 **A. Myself.**  
 5 Q. Okay. Who else?  
 6 **A. And the Deputy Secretary of State Sharon Pino.**  
 7 Q. Okay. And who else?  
 8 **A. And the secretary certainly had received a**  
 9 **recommendation and did approve.**  
 10 Q. Okay. Who else? Alex Curtas?  
 11 **A. Not in the decision, no.**  
 12 Q. Okay. So how was the decision made? I'm not  
 13 going to ask you for substance. I just want to  
 14 know was there an e-mail exchange or one or  
 15 more e-mail exchanges or text exchanges, or did  
 16 it happen in a meeting?  
 17 **A. It happened in a meeting.**  
 18 Q. Okay. And when was that meeting?  
 19 **A. I don't have the exact date. It was certainly**  
 20 **prior to December 20th of 2021. And it was**  
 21 **upon us being made aware that this data, that's**  
 22 **when we initiated conversation, once we were**  
 23 **aware.**  
 24 Q. Okay. Did you receive a complaint?  
 25 **A. We did not receive a formal complaint. We did**

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1 both VoteRef.com and Local Labs have violated  
 2 the prohibition against 'providing' voter data  
 3 by posting New Mexican's private voting  
 4 information online, or in Local Labs' case,  
 5 providing the voter data to VoteRef.com."  
 6 Is that a true statement?  
 7 **A. Yes.**  
 8 Q. And then it says, "We also believe that  
 9 VoteRef.com and Local Labs have 'illegally'  
 10 used this voter data by publishing it on  
 11 VoteRef.com."  
 12 Is that a true statement?  
 13 **A. Yes.**  
 14 Q. All right. Did you recall there being any  
 15 false statement in Ms. Pino's referral to the  
 16 secret- -- to the attorney general?  
 17 **A. No.**  
 18 Q. Before the referral occurred, and set aside  
 19 Mr. Lange, were there any dissenting voices  
 20 between Ms. Pino, yourself, and the secretary  
 21 of state on whether this referral should be  
 22 sent out?  
 23 **A. No.**  
 24 Q. Were there any drafts prepared of this  
 25 referral?

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1 receive an inquiry from the media.  
 2 Q. From ProPublica, correct?  
 3 **A. From ProPublica.**  
 4 Q. ProPublica did not make a complaint against  
 5 VRF, did it?  
 6 **A. No.**  
 7 Q. Okay. Let's turn to Exhibit 4. I just want to  
 8 ask very generally here -- let's go to the  
 9 conclusion. By the way, I assume you reviewed  
 10 this document in preparation for your testimony  
 11 today?  
 12 **A. I have not recently reviewed this document.**  
 13 Q. Okay. And it sounds like you did not speak  
 14 with Ms. Pino in preparation for your testimony  
 15 today?  
 16 **A. I did not.**  
 17 Q. Well, let's look at the very first line of the  
 18 conclusion. "Our office believes the transfer  
 19 and publication of this voter data is in direct  
 20 violation of the Election Code."  
 21 Did I read that correctly?  
 22 **A. You did.**  
 23 Q. Is that a true statement?  
 24 **A. Yes.**  
 25 Q. And then the next sentence, "We believe that

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1 **A. Yes.**  
 2 Q. Okay. Who prepared the drafts?  
 3 **A. I believe our general counsel did.**  
 4 Q. Okay. And is he the one who actually drafted  
 5 this letter and Ms. Pino signed it?  
 6 MS. LECOCQ: Objection.  
 7 **A. I believe our general counsel prepared this and**  
 8 **it was reviewed and the final version was**  
 9 **signed by Ms. Pino.**  
 10 BY MR. GREIM:  
 11 Q. Okay. Who -- did certain people suggest edits  
 12 to this?  
 13 **A. Anyone that was part of the decision making, so**  
 14 **myself, Ms. Pino, general counsel, would have**  
 15 **reviewed and suggested any edits.**  
 16 Q. What edits, if any, did you suggest?  
 17 **A. I don't recall suggesting any edits.**  
 18 Q. What edits did Ms. Pino suggest?  
 19 **A. I don't recall if there were any specific**  
 20 **edits --**  
 21 Q. And what -- okay.  
 22 **A. -- throughout the process.**  
 23 Q. Okay. Well, it went through several drafts,  
 24 correct?  
 25 **A. I don't know if there were several drafts. I**

15 (Pages 54 to 57)

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1 receipt.

2 Q. Okay. So did the attorney general ever provide

3 any updates on, you know, what he was or wasn't

4 doing with the referral?

5 MS. LECOCQ: Objection.

6 **A. No, I do not have any status update on any sort**

7 **of action taken on the criminal referral.**

8 BY MR. GREIM:

9 Q. Okay. Now, I'm not just asking about you; I'm

10 asking about the office. Did the attorney

11 general give any status reports to Ms. Pino or

12 to the secretary or even Mr. Lange about what

13 was going on with the investigation?

14 MS. LECOCQ: Objection, and especially

15 with respect to Mr. Lange.

16 **A. So I am not aware that the office has**

17 **received -- there is no status updates from the**

18 **attorney general's office on this criminal**

19 **matter at this time.**

20 BY MR. GREIM:

21 Q. Okay. At this time, my question is whether

22 there has ever been written or oral updates

23 provided by the AG's office to the secretary of

24 state's office regarding this referral?

25 MS. LECOCQ: Objection.

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1 **A. At this point in time, the office is not aware**

2 **of any action taken by the AG's office on this**

3 **matter and no status updates received on this**

4 **criminal matter at this time.**

5 BY MR. GREIM:

6 Q. Okay. I'm not going to ask you any more about

7 it at this time. My question is now, at any

8 time, this referral was made in December of

9 2021, right, so about 14 months ago.

10 **A. Okay.**

11 Q. So your testimony is that the attorney general

12 never orally or in writing ever communicated

13 again with the secretary of state about this

14 referral?

15 **A. No.**

16 Q. And did you -- did you do any investigation to

17 see whether that was true before today?

18 **A. Whether what was true?**

19 Q. Whether it's true that the attorney general has

20 never mentioned this investigation again to the

21 secretary of state's office after this

22 December 20th referral?

23 MS. LECOCQ: Objection.

24 **A. What I can speak to is that there has been no**

25 **status updates provided to the secretary of**

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1 **state's office on any action being taken on**

2 **this criminal referral by the attorney**

3 **general's office.**

4 BY MR. GREIM:

5 Q. Okay. And how do you know that to be true?

6 **A. Because I would have been made aware.**

7 Q. Did you ask Ms. Pino before today whether she

8 had received any -- any commun- -- let's put

9 aside the term status update for second. Okay.

10 Let's just say any communication at all from

11 the attorney general's office. Let me rephrase

12 this to make it clear for the record.

13 Has there been any communication at all

14 from the attorney general's office to the

15 secretary of state's office about this

16 investigation since December 20, 2021?

17 MS. LECOCQ: Objection.

18 **A. So the only thing that I can speak to is that I**

19 **have asked Ms. Pino and Dylan Lange if the**

20 **attorney general's office has taken any action**

21 **on this matter and the response has been no.**

22 BY MR. GREIM:

23 Q. Okay. And when did you last ask Ms. Pino that

24 question?

25 **A. It's been several months.**

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1 Q. When did you last ask Mr. Lange that question?

2 MS. LECOCQ: Objection. Actually don't

3 answer that.

4 MR. GREIM: Well, it's not a request for

5 legal advice. It's just a request about

6 whether there has been communication or not.

7 MS. LECOCQ: Okay.

8 **A. Yes. More recently, I would say probably**

9 **within the last month.**

10 BY MR. GREIM:

11 Q. But since the new year?

12 **A. Yes.**

13 Q. And I don't want you to give me any legal

14 advice that Mr. Lange told you, but I need to

15 know, did Mr. Lange tell you whether he had

16 heard anything from the attorney general about

17 the investigation?

18 MS. LECOCQ: Go ahead.

19 **A. Mr. Lange has -- to my knowledge, has not heard**

20 **anything from the attorney general's office**

21 **about this investigation.**

22 BY MR. GREIM:

23 **Q. Okay. Does the secretary of state's office**

24 **know if the investigation is continuing?**

25 **A. Our understanding is that it's still pending.**

17 (Pages 62 to 65)



Page 70

1 BY MR. GREIM:  
 2 Q. But you didn't ask him whether he was providing  
 3 any other information to the AG's office?  
 4 **A. I didn't.**  
 5 Q. Before we move along, you said in the past  
 6 month. Maybe we can drill down a little bit  
 7 more. Was it in the month of February?  
 8 **A. Do you have a calendar? I think it was**  
 9 **certainly in the month of January or February.**  
 10 Q. Was it in the last two weeks?  
 11 **A. No.**  
 12 Q. It could have been in early February, but it  
 13 also may have been in January?  
 14 **A. I'm just trying to remember an exact date. I**  
 15 **feel confident in saying that it was the past**  
 16 **three weeks.**  
 17 Q. Okay. So let me ask you this: What  
 18 information has the secretary of state  
 19 gathered -- and I guess we can't know whether  
 20 it's been passed on to the attorney general or  
 21 not. That would be information Mr. Lange has.  
 22 So I understand that. But what information has  
 23 the office gathered it has at least considered  
 24 passing on to the attorney general's office?  
 25 **A. Our office has not gathered anything specific**

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1 **to a criminal investigation. Anything that we**  
 2 **have -- you know, our concern was data posted**  
 3 **on the website, that was the focus. And so**  
 4 **there would only be updates provided to our**  
 5 **attorneys on this case related to the status of**  
 6 **that data.**  
 7 Q. Okay. Whether it was up or down?  
 8 **A. Correct.**  
 9 Q. And separately, I'm going to draw the line so  
 10 that we don't invade privilege here, at least  
 11 until I think about this some more, it sounds  
 12 like there was some other information of some  
 13 type given to Mr. Lange for him to decide  
 14 whether he wanted to give it out to the AG's  
 15 office?  
 16 MS. LECOCQ: Objection.  
 17 **A. No, I never said that.**  
 18 BY MR. GREIM:  
 19 Q. No? Okay. Then I misunderstood. I understood  
 20 that Mr. Lange would have been the person to  
 21 give it on if there were something to give on?  
 22 **A. Sure.**  
 23 Q. Right? We don't know whether he has done so or  
 24 not, correct?  
 25 **A. Correct.**

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1 Q. And so I guess my question is: Was there any  
 2 information that you -- that the office has  
 3 given to Mr. Lange so that he can make the  
 4 decision about whether to pass it on or not?  
 5 **A. The only thing that I am responding to is the**  
 6 **fact that our concern was about the data being**  
 7 **posted or taken down from the Internet. And so**  
 8 **that would be the only update that would have**  
 9 **been provided to our attorneys in this case.**  
 10 Q. Okay.  
 11 **A. And if Dylan so chose, that he felt like that**  
 12 **was relevant to the criminal referral, he may**  
 13 **have provided an update. There is no**  
 14 **additional investigation that our office is**  
 15 **undergoing; that is for the attorney general's**  
 16 **office.**  
 17 Q. Okay, very good. Now, there has been a  
 18 reference to contact with voters -- or not with  
 19 voters, with members of the general public who  
 20 have contacted the secretary of state's office  
 21 about their concerns with VRF. You mentioned  
 22 that already. And I just want to be clear. I  
 23 mean, can we be certain that everything has  
 24 been turned over in discovery at this point,  
 25 everything that the office has received?

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1 **A. Yes.**  
 2 Q. Okay. That saves us a bunch of time.  
 3 I now want to talk a little bit more  
 4 about the secretary of state's position here.  
 5 THE COURT REPORTER: I'm sorry, say that  
 6 again. I didn't hear your full question.  
 7 BY MR. GREIM:  
 8 Q. Sure. I now want to talk more now about the  
 9 secretary of state's position.  
 10 THE COURT REPORTER: Oh, thank you.  
 11 MR. GREIM: Sorry. I know I'm  
 12 shuffling -- there are some papers really close  
 13 to the microphone. I'm going to try to do  
 14 better.  
 15 THE COURT REPORTER: That's okay.  
 16 **A. Mr. Greim, just on your last question you asked**  
 17 **me in particular about the list or the**  
 18 **information from voters, and you asked if we**  
 19 **had turned that all over, correct, that was the**  
 20 **question?**  
 21 BY MR. GREIM:  
 22 Q. Well, my question is: Is there any other  
 23 information that you've received about  
 24 complaints? And we've received the list. I  
 25 just want to know if there's a list update that

19 (Pages 70 to 73)

Page 74

1 we haven't gotten yet.

2 **A. Okay, that's correct. We haven't -- you've**

3 **received any -- the information you've received**

4 **is current.**

5 **Q. Okay. Let me ask you -- let's go to**

6 **Interrogatory Number 13. And we're on back to**

7 **Exhibit 2, it's on page 7.**

8 **A. Okay.**

9 **Q. And the question is, "State whether you contend**

10 **that VRF's use of New Mexico data failed to**

11 **qualify as either a governmental or**

12 **election-related or campaign use under New**

13 **Mexico law, and if so, explain how and why**

14 **VRF's use did not qualify for each applicable**

15 **category."**

16 **Do you see that?**

17 **A. Uh-huh.**

18 **Q. And there's an objection. And then there's**

19 **response subject to the objection. And I'm**

20 **going to start reading from that line, it says,**

21 **"The secretary does contend that VRF's public**

22 **posting of New Mexico data on the Internet**

23 **failed to qualify as a permissible use under**

24 **New Mexico law because it was not for a**

25 **governmental, election, or campaign purpose**

Page 75

1 within the plain meaning of applicable laws."

2 Did I read that correctly?

3 **A. You did.**

4 **Q. Okay. And is that a correct statement?**

5 **A. Yes. The office believes that VRF's public**

6 **posting of the data is not a permissible use.**

7 **Q. Now, you might recall we went -- we explored**

8 **this topic in some detail at the preliminary**

9 **injunction hearing. So I want to understand a**

10 **little bit more about why the public posting is**

11 **not a permissible use. Okay, so let me start**

12 **with governmental. That's one of three uses,**

13 **right?**

14 **A. Right.**

15 **Q. So why is the public -- why is VRF's public**

16 **posting of New Mexico data not a permissible**

17 **governmental use?**

18 **A. Again, I feel like this is something that would**

19 **have been analyzed and discussed with our**

20 **attorneys in particular on how to apply the law**

21 **appropriately.**

22 **Q. I'm not asking for communications with counsel.**

23 **I'd like to know the secretary of state's**

24 **position. Why did it fail to qualify as a**

25 **governmental use?**

Page 76

1 **A. I think because it's not a government entity**

2 **utilizing the data. They're not using it for a**

3 **governmental purpose.**

4 **Q. Okay. So the secretary's position is that**

5 **because VRF is not a governmental entity, its**

6 **use is not a governmental use?**

7 **A. I don't think that's the only thing I said. I**

8 **said they're also not using it for a**

9 **governmental purpose.**

10 **Q. Okay. And so let's talk about for a second**

11 **what they're using it for so that we're on the**

12 **same page. You understand that -- and we went**

13 **through this before so we're going to have to**

14 **kind of warm up and refresh our memory. Do you**

15 **recall VRF saying it was going to analyze the**

16 **data and determine if there were discrepancies**

17 **between basically the credits that show on**

18 **the -- on the snapshot of the list that it got**

19 **and then compare that against the ballots cast**

20 **in the 2020 election and then try to explain**

21 **why there was a difference between those two?**

22 **Do you remember VRF's assertion and testimony**

23 **about that basic idea?**

24 **A. I recall that basic idea that there was an**

25 **intention to utilize voter data received from**

Page 77

1 **our office at a point in time.**

2 **Q. Uh-huh.**

3 **A. And also analyze that based on information on**

4 **ballots cast, correct.**

5 **Q. And let's just stick with that for a second. I**

6 **will tell you -- well, let me just -- I'll just**

7 **ask the question. Is it the secretary's**

8 **position that that's not a governmental use,**

9 **analyzing the data for that purpose?**

10 **A. I think that would certainly be something that**

11 **would be reviewed by our attorney.**

12 **Q. Maybe. But my question is the secretary's**

13 **position.**

14 **A. I think that the public posting of the data on**

15 **the website is what I can speak to as not being**

16 **something that was prepared under state law.**

17 **Q. Okay. So in other words, the secretary is not**

18 **taking a position that this first project I**

19 **just talked about is not a governmental use.**

20 **When you say it's not a governmental use,**

21 **you're really talking about the public posting**

22 **of the data, correct?**

23 **MS. LECOCQ: Objection.**

24 **A. I think that your specific question is not**

25 **something that we specifically analyzed at this**

20 (Pages 74 to 77)

Page 78

1 point in time. So I think the public posting  
 2 is the piece that I can speak to related to  
 3 that question.  
 4 BY MR. GREIM:  
 5 Q. Okay. Well, let's just -- let's keep it to  
 6 that. Let's just keep it to that. So is it  
 7 the secretary's position that publicly posting  
 8 the data and asking voters to review it and  
 9 report any inconsistencies or perceived errors  
 10 to the secretary of state is not a governmental  
 11 use?  
 12 MS. LECOCQ: Objection.  
 13 A. Again, it's the public posting piece that has  
 14 been analyzed, not some of these other  
 15 hypotheticals scenarios that you're describing.  
 16 That is different.  
 17 BY MR. GREIM:  
 18 Q. Okay.  
 19 A. And it would need some review.  
 20 Q. Well, let's -- let's maybe make it as simple as  
 21 we can. It sounds to me like the secretary's  
 22 position -- and just tell me if I -- if you  
 23 disagree. It sounds to me like the secretary's  
 24 position is that as soon as you have publicly  
 25 posted the data on the Internet, that cannot be

Page 79

1 a governmental use regardless of what you tell  
 2 the public about why you're doing it.  
 3 MS. LECOCQ: Objection.  
 4 BY MR. GREIM:  
 5 Q. Is that true?  
 6 A. I disagree. So I think what I can speak to are  
 7 the facts of what Voter Reference Foundation  
 8 did in this circumstance, that's what's been  
 9 evaluated and reviewed, and that's the public  
 10 posting that I can speak about.  
 11 Q. Okay. So, you know what, that is the easiest  
 12 way to do it. So before the criminal referral  
 13 was made, I take it the secretary of state's  
 14 office got on and looked at the VRF website,  
 15 right?  
 16 A. Yes.  
 17 Q. Okay. And based on what it found on the VRF  
 18 website, it decided this is not a governmental  
 19 use, correct?  
 20 A. It's not a permissible use.  
 21 Q. Okay. And we're on governmental right now. So  
 22 they decided -- we'll get to the other ones.  
 23 They decided this is not a governmental use,  
 24 correct?  
 25 A. The analysis was really just based on a

Page 80

1 permissible use. I do not have a recollection  
 2 of a specific analysis related to each item.  
 3 Q. Okay.  
 4 A. It was determined that holistically it was not  
 5 permissible under state law.  
 6 Q. Okay. But let's just -- let's talk about --  
 7 the permissible uses are defined under state  
 8 law, right?  
 9 A. Uh-huh.  
 10 Q. And what are they?  
 11 A. I have them here, and I don't have the statute  
 12 in front of me, but this came from our  
 13 attorneys, so I'm going to trust that it --  
 14 governmental election or campaign purpose.  
 15 Q. Right. I don't want to -- I'm not going to  
 16 make this an exhibit, but I just don't want to  
 17 have any lack of clarity here. I thought I had  
 18 it. Here we go. I'm just going to give you a  
 19 copy -- I'm going to give you the copy of the  
 20 statute here. We're not going to mark it, but  
 21 I'm giving you 1-4-5.5. Here we go. The list  
 22 of uses is under C, correct?  
 23 A. Yes.  
 24 Q. Okay. And so 1-4-5.5 C lists the permissible  
 25 uses under the statute, right?

Page 81

1 A. Yes.  
 2 Q. Okay. And then those are further defined down  
 3 in subsection E?  
 4 A. Correct.  
 5 Q. And maybe we can't go much further than this,  
 6 but I do want to tie this together. I mean,  
 7 the secretary of state's position is that VRF's  
 8 posting on its website, the actual posting it  
 9 did, after it reviewed the website, was not a  
 10 governmental use, correct?  
 11 A. Again, the secretary of state's office, in  
 12 reviewing the statute, not only this section,  
 13 made a decision that the public posting of the  
 14 voter data was not a permissible use of that  
 15 data.  
 16 Q. Okay. And when you say "not a permissible  
 17 use," you mean not a governmental use or  
 18 election use or election campaign purposes use,  
 19 correct?  
 20 A. In part. And it also ties back to the fact  
 21 that it was not appropriately received from our  
 22 office and it was being publicly distributed,  
 23 and we feel like that was a violation.  
 24 Q. And I'm not asking about all the different --  
 25 I'm just trying to focus, okay, I'm trying to

21 (Pages 78 to 81)

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1 focus on the lack of permissible use. We just  
 2 found where the permissible uses are. And, I  
 3 mean, I just hope we're clear. I -- that the  
 4 secretary's position is that VRF's use by  
 5 posting on the Internet is not any of those  
 6 uses, correct?

7 **A. You asked me about our decision. You asked me**  
 8 **about, you know, what -- why did the secretary**  
 9 **of state make this decision and what is our**  
 10 **position. And that's what I'm responding to.**  
 11 **So it is our position that the public posting**  
 12 **of the data is not permissible under state law.**

13 Q. Well, but hold on now, okay? We saw the actual  
 14 statement. The actual statement says it's not  
 15 a permissible use, okay? And so we know that  
 16 there are either two or three permissible uses,  
 17 depending on how you read that section, right?  
 18 Governmental is one of them, right?

19 **A. Uh-huh.**

20 Q. And if it's not governmental, what's the other  
 21 use have to be?

22 **A. Election campaign purpose.**

23 Q. Okay. And so if it's a permissible use, it's  
 24 got to be one or the other, right?

25 **A. And I think there's also parameters around how**

Page 83

1 **that can be utilized. And public posting**  
 2 **online is not one of them.**

3 Q. Okay. But let's just -- let's just stick with  
 4 the analysis. If it's a permissible use, it's  
 5 got to be one or the other, governmental or  
 6 election campaign purposes, right?

7 **A. Correct.**

8 Q. And VRF's posting on the Internet that you  
 9 observed, your -- the secretary's opinion is  
 10 it's not governmental and it's not election  
 11 campaign purposes, correct?

12 **A. I feel like it was a broader analysis based on**  
 13 **the public posting and that it was not obtained**  
 14 **appropriately and that it was being publicly**  
 15 **distributed. So, you know, you continue to ask**  
 16 **that question. I understand. And my answer is**  
 17 **what I've shared, that our analysis was broader**  
 18 **than those two elements.**

19 Q. Well, I'm going to ask -- and this is getting  
 20 interesting. Okay. I'm going to have to probe  
 21 a little further now.

22 So is the secretary's position that if it  
 23 were -- if it -- VRF had obtained them directly  
 24 from the secretary of state's office, that  
 25 their posting on the Internet would be for

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1 governmental or election campaign focuses?  
 2 MS. LECOCQ: Objection.

3 **A. What I can answer is that that -- number one,**  
 4 **that's not what occurred.**

5 BY MR. GREIM:

6 Q. I understand. I'm trying to understand the  
 7 conduct that you contend is sufficient to  
 8 violate this statute.

9 **A. The requester that follows the appropriate**  
 10 **process, the lawful process, that would**  
 11 **publicly post that data on the Internet, that**  
 12 **would be a violation under state law.**

13 Q. We'll just leave it. That's fine. By the way,  
 14 before -- I don't want to move too far.  
 15 Interrogatory Number 13, let's come back to it.  
 16 The top of the page, this is actually page 8,  
 17 the paragraph that continues and ends on the  
 18 very top of the page. The very last sentence  
 19 there says "Investigation by the attorney  
 20 general is ongoing and has not yet resulted in  
 21 any criminal action against VRF."  
 22 Did I read that correctly?

23 **A. You did.**

24 Q. Is that true?

25 **A. Yes. I don't feel like that's any different**

Page 85

1 **than what I shared before and that we have no**  
 2 **knowledge that the case has been closed. We**  
 3 **also don't have any knowledge that there's been**  
 4 **any action, again, by the attorney general**  
 5 **office on that investigation.**

6 Q. You're not backing away from the statement we  
 7 just read, are you?

8 **A. I'm not.**

9 Q. Okay.

10 **A. I'm simply saying it's aligned with what I said**  
 11 **before.**

12 Q. Let me ask you a little bit more about the  
 13 posting issue on the Internet. Okay, we're not  
 14 going to focus so much now on governmental  
 15 election or election campaign.

16 I want to show you a response that we  
 17 received from your attorneys clarifying some of  
 18 your prior interrogatory responses. I think  
 19 this is Exhibit --

20 **A. 5.**

21 Q. -- 5.

22 (WHEREUPON, Deposition Exhibit 5 was  
 23 marked for identification.)

24 BY MR. GREIM:

25 Q. I'm going to show you an e-mail dated just last

22 (Pages 82 to 85)

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1 Tuesday, February 21, from Erin Lacocq to me  
 2 copying some other attorneys. And there are  
 3 some questions that I've posed about some of  
 4 the other answers. And let me -- let me go to  
 5 the very bottom of the page. Let's see here.  
 6 Okay. Actually, let's go to the very first --  
 7 you see there's some bolding in the very middle  
 8 of the page? And I'm asking a question of  
 9 counsel. You'll see there's an answer in bold.  
 10 It says, "Both the AG and the SOS believe that  
 11 'sharing data' outside one's organization, or  
 12 publishing that data to make it available for  
 13 the general public, constitutes a violation of  
 14 New Mexico law. This is not just the act of  
 15 sharing data, but rather disseminating that  
 16 information to the general public."

17 Did I read that correctly?

18 **A. You read that bold section correctly.**

19 Q. Okay. And so I guess my simple question is:  
 20 Is this the position of the secretary of  
 21 state's office?

22 **A. Can I have a moment just to --**

23 Q. You can. I will tell you, we've printed off  
 24 the entire e-mail chain. It also has lots of  
 25 discussion about other things, unfortunately.

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1 So the only -- the e-mail that we actually care  
 2 about is just on pages 1 and 2. And it's got  
 3 other questions that don't really relate to  
 4 what we're doing here today.

5 MS. LECOCQ: I object to the extent that  
 6 we're getting into legal contentions rather  
 7 than the position of the office. But other  
 8 than that, go ahead.

9 **A. (Witness reviewing document.) Okay.**

10 BY MR. GREIM:

11 Q. My very first question is: Is what's in bold,  
 12 the very first bolded answer on this page, the  
 13 position of the secretary of state's office?

14 **A. Yes.**

15 Q. Okay. And I now -- I want to explore the idea  
 16 of sharing the data with the general public  
 17 online. I mean, we talked -- I asked you  
 18 questions before in another proceeding where I  
 19 asked about sharing data outside of an  
 20 organization. Do you remember that?

21 **A. Yes.**

22 Q. We talked at some length. I'm going to put  
 23 that aside. We're going to focus on the  
 24 Internet, okay? And so my question is: What  
 25 is it about having data available on the

Page 88

1 Internet to the general public that makes the  
 2 conduct unlawful in the view of the secretary  
 3 of state?

4 MS. LECOCQ: I'm going to go ahead and  
 5 just do a standing objection for legal  
 6 contentions.

7 MR. GREIM: Noted.

8 **A. I remember our past conversation as well, and**  
 9 **I, again, today would share that the position**  
 10 **of the office is that sharing within an**  
 11 **organization is different than sharing outside**  
 12 **of that organization, and so that applies to**  
 13 **the Internet. You are obviously sharing**  
 14 **outside of the organization if it's publicly**  
 15 **posted online.**

16 BY MR. GREIM:

17 Q. Okay. And I want to understand -- well, let me  
 18 ask you this: What if an entity contracts with  
 19 individuals to review voter data it has  
 20 requested, in the secretary of state's view, is  
 21 that sharing the data outside of your  
 22 organization?

23 **A. I'm just going to make sure I understand your**  
 24 **question.**

25 Q. Sure.

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1 **A. So you're describing a scenario in which there**  
 2 **is an entity that has lawfully obtained the**  
 3 **voter data.**

4 Q. Correct.

5 **A. And they have agents within their organization**  
 6 **that they are sharing the data with, that --**  
 7 **that are contained in that organization."**

8 Q. No. They've lawfully obtained the data, then  
 9 they go and they hire very smart data analysts  
 10 and they execute contracts with these data  
 11 analysts, independent contractor agreements,  
 12 and they say, "Here's the data. I want you to  
 13 see if there are flaws here. And we'll pay you  
 14 \$100 an hour for your work."

15 In the view of the secretary of state, is  
 16 that sharing the data outside of the  
 17 organization?

18 MS. LECOCQ: Objection.

19 **A. Yeah, that -- that is certainly a set of facts**  
 20 **that have not been explored currently by our**  
 21 **office in particular. What I can speak to,**  
 22 **again, is if it's considered a part of the**  
 23 **organization within that same entity, you know,**  
 24 **that's unlawful sharing of the data.**

25 BY MR. GREIM:

23 (Pages 86 to 89)



Page 90

1 Q. Okay.

2 **A. And I can't speak to all the contractual --**

3 Q. Okay.

4 **A. -- scenarios that you've provided.**

5 Q. So the secretary, as we sit here today, does

6 not have a position on whether sharing the data

7 with contractors would violate the statute?

8 MS. LECOCQ: Objection.

9 **A. I think that we have a position that if it's**

10 **within the same organization, it can be shared.**

11 BY MR. GREIM:

12 Q. I understand.

13 **A. Outside of the organization, it should not be**

14 **shared without lawfully obtaining the data.**

15 Q. Okay. And what we're exploring is sharing

16 outside of the organization. I'm trying to

17 understand when we cross that line, you know,

18 where is the line? That's what all these

19 questions are going to try to do. You know

20 that's what I'm doing. I'm going to do my

21 best. And your answer may well be: We do not

22 have a position on where that line exists. We

23 have not explored that question. We do not

24 know the answer to it. That's okay. I just --

25 I want to learn what I can.

Page 91

1 And so I understand your answer is when

2 you share it outside of the organization,

3 that's where the line is crossed. But we're

4 all lawyers here, okay? And there's lots of

5 people who want to use the data. And so I'm

6 trying to understand what the principle is

7 behind that. I'm asking you specific questions

8 to try to understand that principle, if we can.

9 I'm not going to spend too much longer given

10 the time we have.

11 So the question I just asked was about

12 people who don't become employees of the

13 organization, they just get hired under a

14 contract to do a job with the data. And I

15 think the answer that I have back is the

16 secretary of state doesn't have a response to

17 that question, doesn't have a position on that?

18 **A. I don't think that's what I said. So number**

19 **one, you made a good distinction. You're all**

20 **attorneys, I'm not. So that's why we would**

21 **seek the guidance and advice of an attorney for**

22 **a separate set of facts. I think what you've**

23 **described is very fact based. And those facts**

24 **have not been explored by our office at this**

25 **point in time.**

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1 Q. Okay. I understand they haven't. I understand

2 that you would eventually come to some

3 decision, you know, but -- and so what I'm

4 trying to understand is right now does the

5 secretary of state's office have a position

6 about contractors? That's my question. And

7 either you do or you do not.

8 **A. I think that that is dependent on what the**

9 **relationship is to the organization that has**

10 **received the data, and that's what I cannot**

11 **speak to.**

12 Q. So if the relationship is just contractual, you

13 cannot tell us whether that counts as inside

14 the organization or outside the organization?

15 **A. I am not prepared to answer what constitutes,**

16 **you know, a contractual agreement, what means**

17 **you're a part of the organization or not. I**

18 **think that's very dependent on the facts of the**

19 **specific scenario.**

20 Q. Why is it important that the person who

21 receives the data from the lawful requester is

22 a part of the organization?

23 **A. Because I think that is a clear distinction**

24 **that we're able to make based on our analysis**

25 **of the statute.**

Page 93

1 Q. Okay. Based -- obviously the statute doesn't

2 say part of the organization. That doesn't

3 exist in the statute. You agree with me on

4 that?

5 **A. I agree that we've reviewed and provided some**

6 **legal review and analysis on the facts that we**

7 **feel like our position -- we maintain the**

8 **position that if you're within the**

9 **organization, that is permissible sharing. And**

10 **if you're outside of the organization, that's**

11 **not permissible under state law.**

12 Q. And what is it about being part of the

13 organization or within the organization --

14 those are the words you just used -- that make

15 it permissible to share the data with those

16 individuals?

17 **A. We feel like based on analysis -- you know,**

18 **again, we would probably have to go back to an**

19 **attorney to understand some of those**

20 **intricacies. But that is a fact that has been**

21 **presented to our office and we've reviewed it**

22 **and made a determination that based on state**

23 **law we would not feel like it was a violation**

24 **if folks were sharing the data within that**

25 **organization because they have appropriately**

24 (Pages 90 to 93)

Page 94

1 **obtained that data.**

2 Q. Okay. So implicit within your referral, I  
3 think, is the secretary of state -- well, let  
4 me back up.

5 The secretary of state understands  
6 that -- because they -- you've visited VRF's  
7 website, correct?

8 **A. Uh-huh.**

9 Q. And on the website for New Mexico before the  
10 data was pulled down, you must click that you  
11 will only use the data for specific purposes,  
12 correct? Do you recall that?

13 **A. I recall that being something that was  
14 testified to. I didn't -- yeah, I recall  
15 that -- somebody sharing that.**

16 Q. And so VRF is taking the position here that  
17 someone who agrees to use the data for  
18 permissible purposes, for the purposes that VRF  
19 wants to use the data for, is part of VRF. It  
20 forms an association with us to use this data  
21 for a certain purpose. Does the secretary of  
22 state agree with that position?

23 MS. LECOCQ: Objection.

24 **A. Again, I think you're going back to kind of  
25 something that would require some additional**

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1 **to our office, pay for data, and then receive  
2 the data.**

3 Q. And so my question is simply this: If Voter  
4 Reference Foundation makes a request with the  
5 affidavit, pays for the data and receives it,  
6 and then posts the data online for anyone who  
7 agrees to use it for lawful purposes, okay,  
8 which we know is true, we know the second thing  
9 is true, why does the secretary of state's  
10 office not recognize the viewers of VRF's data  
11 as being within the organization of VRF?

12 MS. LECOCQ: Objection.

13 **A. And, again, I think that's different than what  
14 I responded to. So, one, I was clear that I am  
15 not an attorney. I can't speak to what that,  
16 you know, relationship is from a legal  
17 perspective. I would need to take those facts  
18 in particular and address it with our general  
19 counsel or our attorney to get clarity on how  
20 to apply the law in that specific scenario.**

21 **What I can state, however, is that there  
22 is a specific process to lawfully obtain, and  
23 that requires the affidavit.**

24 BY MR. GREIM:

25 Q. Okay. I'm not asking you anymore about

Page 95

1 **legal analysis, right, what is the relationship  
2 between that individual and Voter Reference  
3 Foundation.**

4 **What I will say is that, again, we feel  
5 like the statute is very clear in that a  
6 requester needs to complete an affidavit with  
7 our office to be able to utilize, to receive  
8 that data, and to use it for a permissible  
9 purpose.**

10 **And so in that case, Voter Reference  
11 Foundation, from our perspective, does not have  
12 the authority to prescribe that affidavit.**

13 BY MR. GREIM:

14 Q. Voter Reference Foundation doesn't have the  
15 authority to prescribe the affidavit?

16 **A. Yes.**

17 Q. What do you mean by that?

18 **A. The statute, our state statute requires that a  
19 requester complete an affidavit. I know we  
20 spoke about that pretty in depth. So there is  
21 an appropriate lawful process to receive voter  
22 data.**

23 Q. Right.

24 **A. And one piece of that process is for a  
25 requester to complete an affidavit, submit it**

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1 lawfully obtaining it, okay? We'll come back  
2 to that question.

3 I'm asking you now about an organization  
4 that lawfully has the data. They want to share  
5 that data with other people and they know the  
6 issue is going to be: Is the secretary of  
7 state going to think these people are within  
8 the organization or are they not within the  
9 organization, okay?

10 So my question to you is: Why does the  
11 secretary of state contend that people who  
12 agree, before they're given access to the data  
13 that they will only use it for lawful purposes,  
14 are not within the organization of VRF?

15 MS. LECOCQ: Objection.

16 **A. I don't understand your last statement. Are  
17 you asking me a question?**

18 BY MR. GREIM:

19 **Q. Okay. I was. I was. My question is -- I'm  
20 trying to think of a way to break this down.**

21 **Let's look at it this way: If an entity,  
22 with lawfully requested data, it sells that  
23 data to its customers, but requires -- and it  
24 makes it available to them on the Internet, but  
25 it requires them to do that through a secure**

25 (Pages 94 to 97)

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1 connection, does the secretary of state say  
 2 that's okay, those customers are really within  
 3 the organization?  
 4 MS. LECOCQ: Objection.  
 5 **A. Again, you know, what I can speak to is either**  
 6 **in the organization or out of the organization.**  
 7 **That is the determination. That is the**  
 8 **position of the office. Your specific**  
 9 **hypothetical scenarios would require a specific**  
 10 **analysis on those facts that I am not able to**  
 11 **speak to.**  
 12 BY MR. GREIM:  
 13 Q. Because the data -- the statute doesn't speak  
 14 to those situations, does it?  
 15 **A. It speaks to within the organization or out of**  
 16 **the organization. That is clear from our**  
 17 **analysis based on the requirement that this**  
 18 **came to the office and we had to review those**  
 19 **specific facts. And so we've taken a position.**  
 20 **We are still, you know, of that same position**  
 21 **today; if it's in the organization, you can**  
 22 **share it. If it's not, no. And that has not**  
 23 **changed. But, you know, you're kind of coming**  
 24 **off with something that's outside of that**  
 25 **analysis --**

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1 Q. Okay.  
 2 **A. -- that would require some review.**  
 3 Q. Well, let's just make it this simple. The  
 4 secretary of state contends that VRF's sharing  
 5 with people who click on the link before  
 6 getting the data is not sharing within the  
 7 organization, correct?  
 8 MS. LECOCQ: Objection.  
 9 **A. I don't -- I don't have an awareness of us**  
 10 **taking that specific position that clicking on**  
 11 **a link is what determines if you're in or**  
 12 **outside of the organization.**  
 13 BY MR. GREIM:  
 14 Q. Well, I'd like to know what it is about VRF's  
 15 conduct that caused the referral, okay? And  
 16 certainly the secretary of state's office  
 17 visited the website. We know that, okay? And  
 18 the secretary of state's office encountered the  
 19 initial requirement that a user click that they  
 20 will agree to the terms of the use, including  
 21 that it be used for a lawful purpose.  
 22 **The secretary of state -- well, let me**  
 23 **ask you this: Can the secretary of state tell**  
 24 **us that they encountered that when they came on**  
 25 **to the website?**

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1 MS. LECOCQ: Objection.  
 2 **A. I don't recall that being a specific item that**  
 3 **was discussed. I can speak that I heard**  
 4 **testimony that that existed on the website. I**  
 5 **don't recall that being part of the analysis.**  
 6 BY MR. GREIM:  
 7 Q. Okay. Well, does the secretary of state  
 8 contend that, in fact, users who get on the  
 9 website to view the data don't have to click  
 10 first to agree that they'll only use the data  
 11 for permissible purposes?  
 12 MS. LECOCQ: Objection.  
 13 **A. I don't know what Voter Ref asks them when you**  
 14 **go into their website.**  
 15 BY MR. GREIM:  
 16 Q. Okay. And did the secretary of state ever  
 17 investigate that before making a criminal  
 18 referral?  
 19 **A. I think we certainly viewed the website and we**  
 20 **had an understanding that our voter data was**  
 21 **being publicly made available and it was being**  
 22 **made publicly available by an entity that did**  
 23 **not request that data from our office. And**  
 24 **that was the basis of the analysis.**  
 25 Q. Okay. So did the secretary of state make any

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1 effort to determine what users had to do before  
 2 they could view the data on VRF's website?  
 3 MS. LECOCQ: Objection.  
 4 **A. Again, I don't recall that being part of the**  
 5 **analysis.**  
 6 BY MR. GREIM:  
 7 Q. Who knows the answer to that question?  
 8 **A. I'm sure our attorney. But I just don't think**  
 9 **that was a key point. It was a fact that the**  
 10 **data was publicly available; it was a fact that**  
 11 **Voter Reference Foundation has not submitted**  
 12 **the appropriate affidavit to receive that data;**  
 13 **and it is a fact that our analysis about how**  
 14 **you may distribute that is leading to the**  
 15 **containment in the organization. So the World**  
 16 **Wide Web is not an organization.**  
 17 Q. So the secretary -- it didn't matter to the  
 18 secretary of state what someone had to agree to  
 19 before viewing the data on the website?  
 20 MS. LECOCQ: Objection.  
 21 **A. I wouldn't say it didn't matter. But I've**  
 22 **shared what our analysis was based on. You**  
 23 **know, again, going back to your original**  
 24 **question, if I click a box, does that**  
 25 **constitute being a part of Voter Reference**

26 (Pages 98 to 101)



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1 **Foundation as an organization? That is not**  
 2 **something that I am prepared to answer and**  
 3 **would require some analysis from an attorney.**  
 4 **If you're asserting that it somehow brings them**  
 5 **into your organization, I guess that's your**  
 6 **argument to make, but...**

7 BY MR. GREIM:

8 Q. The secretary of state didn't -- well, let me  
 9 ask you this -- you said what your analysis  
 10 was, okay. I'm trying to understand that a  
 11 little bit better.

12 A. Sure.

13 Q. So did the analysis at all depend on the  
 14 relationship that was formed between VRF and  
 15 the users of its website?

16 A. No.

17 Q. It was irrelevant?

18 A. It was not considered as part of the analysis.

19 Q. And it's possible -- because we can't ask you  
 20 again because this is our last day, I think we  
 21 have to leave it at this -- it's possible that  
 22 the secretary of state did not determine before  
 23 making the referral whether users, in fact, had  
 24 to click through and promise that they would  
 25 only use the data for permissible purposes?

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1 of the public had to do before accessing the  
 2 data. That's what these questions are about.

3 I'm going to ask it very -- just listen  
 4 very carefully. I'm going to speak slowly. I  
 5 know we're covering a lot of ground. Let's  
 6 just try to nail this down.

7 My question is: Did the secretary of  
 8 state's office determine, before making the  
 9 referral, what members of the public had to do  
 10 in order to get access to the data on VRF's  
 11 website?

12 A. And, again -- I will also speak slowly -- that,  
 13 in fact, our office did not utilize the fact  
 14 that there was a check box as a part of a  
 15 discussion for making a determination if it was  
 16 lawful or unlawful. And so, therefore, I  
 17 cannot speak if our attorney clicked the box.  
 18 What I know is that the office made a  
 19 determination based on the fact that voter data  
 20 was being publicly made available on the  
 21 Internet.

22 Q. My question is not what your determination was.  
 23 My question is: What did the secretary of  
 24 state's office know about how the website  
 25 worked? I'm not asking whether it mattered to

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1 MS. LECOCQ: Objection.

2 A. Again, I think I've been clear on the position  
 3 of the office that posting voter data online is  
 4 a public distribution of that data, and that  
 5 that is the position of the office.

6 BY MR. GREIM:

7 Q. That wasn't my question. Okay. My question is  
 8 what the secretary's office did before making  
 9 the referral. I'm not asking you to repeat  
 10 your position. We have that down.

11 My question is: Is it possible that no  
 12 one from the secretary of state's office looked  
 13 to see what members of the public had to do in  
 14 order to get access to the information on VRF's  
 15 website?

16 MS. LECOCQ: Objection.

17 A. And I, again, shared that it was not part of  
 18 the analysis.

19 BY MR. GREIM:

20 Q. I know it's not part of the analysis. I'm  
 21 trying to now probe your knowledge. I'm trying  
 22 to probe the knowledge of the office when it  
 23 made the referral; not its analysis, its  
 24 knowledge. And I'm trying to determine whether  
 25 the secretary of state determined what members

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1 you or not. I'm asking whether you knew. And  
 2 so whether an attorney wrote it or an  
 3 investigator in your office, either you knew or  
 4 you did not know, or you don't know whether he  
 5 knew. Okay, so I'm going to ask it one last  
 6 time.

7 Did the secretary of state's office know  
 8 what was required for members of the public to  
 9 do before they accessed the data on VRF's  
 10 website?

11 A. I don't know.

12 Q. Who would know the answer to that question?

13 A. I suspect our attorney.

14 Q. Do you know who investigated it? Was it an  
 15 attorney?

16 A. I think we talked about who was involved in  
 17 making a decision about referring it. So that  
 18 was myself, Deputy Secretary of State Sharon  
 19 Pino, general counsel Dylan Lange. And based  
 20 on all of the information we had in hand, we  
 21 made a decision to refer that.

22 Q. Okay. And there was no one else involved in  
 23 making that decision?

24 A. And as I shared, we made a recommendation and  
 25 the secretary of state did approve that

27 (Pages 102 to 105)

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1 referral.

2 MR. GREIM: Let's take another little  
3 break here.

4 (WHEREUPON, at this time a lunch break  
5 was taken.)

6 BY MR. GREIM:

7 Q. Back on the record. So I wanted to -- before  
8 we totally move past what we did at the end  
9 of -- before our break, I want to ask you about  
10 some other recipients of the voter data here.

11 Now, each political party requests the  
12 voter data, don't they, on a regular basis?

13 A. Yes.

14 Q. And do you recall testifying before that, you  
15 know, political parties sharing the data with  
16 volunteers would not be deemed sharing outside  
17 the organization?

18 A. Agreed.

19 Q. Okay. And the secretary of state does not go  
20 and ask the political parties to submit a --  
21 some sort of agreement from each volunteer for  
22 a party or document that in any way, correct?

23 A. No, if it's within that organization.

24 Q. And so how -- what is it that makes the  
25 volunteers part of the organization of a

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1 would require counsel. Well, yeah, I'm not  
2 going to suggest an answer to you. Let's just  
3 move ahead.

4 So let me -- let me ask you, I mean,

5 political parties and candidates both use

6 volunteers, you know that. And you know that

7 candidates in this state and elsewhere hire

8 political consultants to help run their

9 campaigns, right?

10 A. Right.

11 Q. And I guess your testimony is that the

12 secretary of state does not have a position, as

13 we sit here today, as to whether the candidates

14 sharing voter data with their paid consultants

15 would constitute sharing within the

16 organization?

17 A. We have not evaluated that particular fact.

18 Q. Now, what if I tell you -- I know I'm not from

19 New Mexico, but if I tell you right here and

20 now that I believe that political parties are

21 sharing voter data that they receive -- that

22 they lawfully receive with paid political

23 consultants who are not part of the political

24 party and not part of the candidate campaign,

25 and I say I'm making a complaint and I believe

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1 political party?

2 A. I don't think there's any particular legal  
3 definition that I can point you to, but they  
4 are participating as a member of that  
5 organization. My understanding is they are  
6 staff of the organization.

7 Q. And what about a political party, you know,  
8 sharing the data with their political  
9 consultants that they pay for, would that be  
10 okay with the secretary of state's office?

11 That does not count as sharing outside the  
12 organization?

13 A. I think we're back to, you know, in the  
14 organization, out of the organization, is there  
15 specific facts that need to be reviewed, then  
16 that would be something we would have to look  
17 at on an individual basis. But if it is part  
18 of their organization, that they can share.

19 Q. Well, and as I understand that -- I mean, I  
20 think -- I'm going to do a few more of these  
21 questions, and if you do not have an answer  
22 that require consulting with counsel --

23 A. Uh-huh.

24 Q. -- then I'd advise you to give me an answer if  
25 you can, but -- but just tell me that that

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1 they're doing it, I mean, what's stopping you  
2 from investigating?

3 A. Getting a complaint about an alleged violation,  
4 there is nothing that would stop us from  
5 looking into it.

6 Q. Okay. Now, let's talk about other requesters,  
7 other recipients of data. The group called the  
8 Public Interest Law Foundation requests data  
9 from the secretary of state's office, right?

10 A. Right.

11 Q. And would your position be that they cannot  
12 share the voter data with their own volunteers,

13 or would it be that, just like political

14 parties, their volunteers are okay to receive

15 the data?

16 A. I think that we would handle it in the same  
17 way. So if they're a part of the organization,  
18 then they would be allowed to share the data.

19 Q. And you would not go to PILF, I'll call it, and  
20 say we need to see documentation proving that  
21 these volunteers are part of your organization?

22 A. As a practice, no. If we're made aware that  
23 something is happening outside the bounds of  
24 the law, then we may ask additional questions.  
25 But if they are affirming through the affidavit

28 (Pages 106 to 109)

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1 that they are using it lawfully, meaning they  
2 are not unlawfully sharing or distributing or  
3 selling, that is the document that we utilize  
4 to assess that they're going to follow the law.  
5 If we're made aware, then we would take a  
6 different step forward.

7 Q. Can VRF share data that it lawfully receives  
8 from the secretary of state's office with its  
9 own volunteers without violating the same  
10 organization issue?

11 A. If they're a part of the organization, anything  
12 that is a lawful part of an entity, that  
13 determination is not mine to make in this  
14 instant. But if it's sharing it within its own  
15 organization, that is the parameter. That is  
16 the position of our office that that's the  
17 parameter that we would ask an entity to  
18 follow. And we believe it's outlined in the  
19 affidavit.

20 Q. And volunteers count, just like they count for  
21 parties, correct?

22 A. Again, I think -- you know, you are I think  
23 stretching my answer a little bit there. I  
24 think my direct answer to you has been and will  
25 continue to be that the position of the office

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1 is that you have to be within the organization.  
2 And I continue to say that each scenario --  
3 facts that need to be evaluated, I think you  
4 said it best, would need to go to our counsel  
5 for an analysis to determine if it's lawfully a  
6 part of organization or not.

7 Q. Okay. So for VRF, the request would need to go  
8 to counsel, correct?

9 A. Under any circumstance, any relationship.

10 Q. So does -- the party's use of volunteer, that  
11 has gone to counsel?

12 A. I think that you asked me if I had testified to  
13 that fact, and my understanding is that they  
14 are -- what I said was my understanding was  
15 that they are employed with that organization.

16 Q. Well, obviously, volunteers for political  
17 parties are not employees of the parties.

18 A. They are staff is my understanding, is what I  
19 testified to and what I answered here today.

20 Q. Okay. Well, the -- let's just say this: You  
21 don't -- you're not backing away from what your  
22 testimony was before, correct? We can just go  
23 back and look to see what you say. You're not  
24 changing anything today?

25 A. I'm not changing anything today.

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1 Q. Okay. And I just want to be clear because you  
2 just used the word "employees." I take it your  
3 position is not that being within an  
4 organization is limited to employees, correct?

5 A. I have not stated that.

6 Q. Okay. Because volunteers are not paid, right?

7 A. Again, I think that, you know, you're asking me  
8 to analyze scenarios that have yet to come to  
9 our office.

10 What I can speak to is if you're a part  
11 of the organization. And you continue to ask  
12 me to, you know, make some legal analysis on  
13 hypothetical scenarios that I am not able to do  
14 in this moment. So I think it's the same  
15 question.

16 Q. Okay. But it's fair to say that the secretary  
17 of state's office, and you're here as the  
18 30(b)(6) witness, they have not actually  
19 undertaken a formal analysis on the questions  
20 I've asked you so far, you're not aware of any  
21 such analysis?

22 A. Correct.

23 Q. Well, let me ask you -- today VRF has voter  
24 data from the secretary of state's office. It  
25 has it. Can VRF share that voter data with its

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1 volunteers without violating the -- within the  
2 organization's restriction?

3 A. I don't have a different answer for you,  
4 Mr. Greim. If it's within your organization,  
5 you may share it.

6 Q. Right. My question is: Are volunteers within  
7 the organization?

8 A. Are they a part of the staff? I guess that  
9 goes back to the analysis that you're tying it  
10 to. So that is -- that was my testimony and  
11 that still is if they're a part of the  
12 organization.

13 Q. It's okay if they're unpaid?

14 A. I think the fact is are they a part of the  
15 organization or not. That is really what the  
16 requirement is.

17 Q. So do they -- do they need to have an agreement  
18 with the organization of any kind?

19 A. We have not outlined all of those logistical  
20 details. Right? Every scenario would require  
21 some analysis to determine if it's within the  
22 bounds of the statute or not.

23 Q. Okay. Well, I'm going to go just a bit further  
24 before we move on. So canvassers who walk door  
25 to door for candidates and political parties

29 (Pages 110 to 113)

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1 get a list of voter data that comes from the  
 2 secretary of state. And let's just stipulate  
 3 those door-to-door walkers are not employees,  
 4 they're not being paid, they're college  
 5 students. Is that unlawful activity?  
 6 MS. LECOCQ: Objection.  
 7 **A. I think -- I guess the question would remain**  
 8 **are they a part of the organization that**  
 9 **originally received the data. Again, the same**  
 10 **question.**  
 11 Q. So the secretary of state can't answer that  
 12 question?  
 13 **A. Not without additional review, agreed.**  
 14 Q. Now, remember I asked you about a couple of  
 15 for-profit groups such as Catalist and  
 16 Aristotle and i360, I think a couple of times  
 17 before in your prior testimony, right?  
 18 **A. Uh-huh.**  
 19 Q. And these are groups the district court made  
 20 factual findings about. Did you read the  
 21 district court's decision in this case?  
 22 **A. I did not.**  
 23 Q. Okay. Well, do you recall that I raised the  
 24 question of these groups requesting data from  
 25 the secretary of state and then charging

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1 clients to make the data available for them for  
 2 their own purposes? And I asked you whether  
 3 that counts as sharing outside the organization  
 4 of these for-profit companies like Catalist or  
 5 Aristotle. Do you recall that questioning?  
 6 **A. I recall similar questioning. I guess just to**  
 7 **be clear, who are they sharing with? I**  
 8 **didn't --**  
 9 Q. Customers.  
 10 **A. What does that mean?**  
 11 Q. It could be a candidate, it could be a  
 12 non-profit that wants to engage in advocacy.  
 13 And rather than requesting the data directly  
 14 from you, they go and they buy access to  
 15 databases from groups like Catalist and  
 16 Aristotle.  
 17 And when I mentioned this to you before,  
 18 I think you said you'd never heard of these  
 19 groups before, correct?  
 20 **A. Uh-huh.**  
 21 Q. Now, you know there is a record the secretary  
 22 of state has of the groups requesting data. I  
 23 take it you don't review that list every month  
 24 or something, right?  
 25 **A. I don't.**

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1 Q. Okay. And I think you said you never had a  
 2 complaint about those groups, which is why  
 3 you'd never looked into it before. Do you  
 4 recall that?  
 5 **A. Yes.**  
 6 Q. Okay. Now, I asked you specifically in your  
 7 testimony before the Court whether your office  
 8 would, in fact, go and look into these groups  
 9 to determine whether they were violating the  
 10 law. Do you remember that?  
 11 **A. If I received a complaint, is that what you**  
 12 **stated?**  
 13 Q. No, I didn't ask whether you received a  
 14 complaint. I just said based on the  
 15 information we had during the proceeding at  
 16 that time, whether your office would go and  
 17 look into those entities. Do you recall that?  
 18 **A. I recall a different statement.**  
 19 Q. Okay. What do you recall?  
 20 **A. What I recall was you being -- asking for**  
 21 **clarity and if we had an awareness that these**  
 22 **groups were violating the law, if we would look**  
 23 **into it.**  
 24 Q. I see. I see. Okay. Well, let me ask you:  
 25 Have you done anything since your testimony to

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1 look into whether these groups were violating  
 2 the law?  
 3 **A. No.**  
 4 Q. And let me ask you this: If a for-profit group  
 5 is receiving data from New Mexico and other  
 6 states and other sources of information and  
 7 then charging clients a fee for access to that  
 8 data, would that comply with your  
 9 within-the-organization requirement? Is that  
 10 sharing permissible?  
 11 **A. They're sharing it outside of the organization?**  
 12 Q. Yes, with their clients.  
 13 **A. So outside of their organization is a part of**  
 14 **this? That is the background?**  
 15 Q. Yeah, I'm asking whether that counts as outside  
 16 of the organization.  
 17 **A. Oh, you're asking me to make a determination?**  
 18 Q. Yeah.  
 19 **A. Again, you know, I'm not clear on who are these**  
 20 **entities. I don't know their relationship. If**  
 21 **it's within their organization, they're good.**  
 22 **If it's not, they can't share it.**  
 23 Q. What would it take for you to look deeper into  
 24 this question to decide whether the law is  
 25 being violated?

30 (Pages 114 to 117)

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1 **A. I think it would take just somebody making our**  
 2 **office aware of the practice, the allegation,**  
 3 **and the details of any violation, that's how we**  
 4 **handle all complaints.**

5 **Q. So if ProPublica contacted you about this, that**  
 6 **might be sufficient?**

7 **MS. LECOCQ: Objection.**

8 **A. If we're made aware of a potential violation,**  
 9 **our office has the authority to look into it.**

10 **BY MR. GREIM:**

11 **Q. And as of today, there's been no effort**  
 12 **whatsoever to look into what Catalist or**  
 13 **Aristotle are doing?**

14 **A. We have not -- again, the fact remains that we**  
 15 **have not received any complaints nor allegation**  
 16 **that they have violated the law.**

17 **Q. Do you have a written policy that you won't**  
 18 **investigate without a complaint?**

19 **A. No.**

20 **Q. Okay. That's just a rule of thumb that the**  
 21 **office uses?**

22 **A. I think our office has limited resources, and**  
 23 **so we have to develop policies and procedures**  
 24 **that provide our office an opportunity to both**  
 25 **manage our workload and treat constituents**

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1 **equally. So we do have a policy and procedure**  
 2 **related to voter complaints. We receive**  
 3 **several on various matters. And in particular,**  
 4 **I think it's important to notice that the**  
 5 **distinguishing factor for Voter Reference**  
 6 **Foundation was it was online; that was the**  
 7 **alarming issue.**

8 **Q. Okay. So -- well, maybe let's ask about this**  
 9 **then. Is the office's position that sharing**  
 10 **outside the organization is okay so long as**  
 11 **it's not online?**

12 **A. No.**

13 **Q. Okay.**

14 **A. But to your point on -- you know, what in this**  
 15 **case -- it wasn't a complaint that we received,**  
 16 **right? We were made aware. We took an action**  
 17 **outside of that complaint process that there**  
 18 **was an immediate concern for public safety.**

19 **Q. What if a federal district court made you aware**  
 20 **of possible criminal activity, would that be**  
 21 **sufficient or would you need to receive it from**  
 22 **someone else?**

23 **A. I don't think there's any one single source,**  
 24 **right. It's simply a matter of being aware and**  
 25 **managing the appropriate resources and the**

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1 **appropriate priorities.**

2 **Q. Okay. I'm just going to read to you from the**  
 3 **district court's decision in this case,**  
 4 **document 51, pages 158 to 159.**

5 **"The Court found the secretary of state's**  
 6 **interpretation of the election code**  
 7 **criminalizes requesters, such as Catalist,**  
 8 **i360, Data Targeting, and L2 Inc., who applied**  
 9 **for voter data and then sell it to clients**  
 10 **outside their own organization." That's at**  
 11 **pages 158 and 159. Now, having --**

12 **A. Sorry. What did it say, the Court determined**  
 13 **that?**

14 **Q. Yes. Yeah. This is from a court decision in**  
 15 **this case. So my question is: Was the**  
 16 **secretary of state aware of that statement and**  
 17 **the district court's decision?**

18 **A. Two questions ago I responded that I had not**  
 19 **read that decision.**

20 **Q. Okay. You haven't. But I take it that the**  
 21 **secretary of state -- the secretary of state**  
 22 **issued a press release about that decision,**  
 23 **right? So is it your testimony that the**  
 24 **secretary of state was unaware of that**  
 25 **statement and the Court's decision?**

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1 **A. Our office is currently aware of that decision.**

2 **Q. Okay. And so was why was that statement not**  
 3 **sufficient, a finding from a federal district**  
 4 **court, to at least look into whether Catalist**  
 5 **and the other entities were violating the law?**

6 **MS. LECOCQ: Objection.**

7 **MS. SCHREMMER: Objection.**

8 **A. I don't think it's insufficient. I think, you**  
 9 **know, our office has limited resources.**

10 **There's nothing saying we won't look into it.**  
 11 **The question I've responded to as of right now,**  
 12 **we have not. That doesn't mean we won't.**

13 **BY MR. GREIM:**

14 **Q. Well, what additional information would it take**  
 15 **for you to look into these questions?**

16 **A. I don't think there is anything additional in**  
 17 **particular.**

18 **Q. So maybe one day somebody will check out one of**  
 19 **the websites and understand what they do with**  
 20 **their data?**

21 **MS. LECOCQ: Objection.**

22 **A. I have not heard anything that you have**  
 23 **presented here today that tells me that they**  
 24 **are publishing it online.**

25 **BY MR. GREIM:**

31 (Pages 118 to 121)



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1 Q. I see. So is that the threshold for  
 2 determining -- for starting an investigation?  
 3 A. It's not, but what I've spoken to is it was a  
 4 deciding factor in the prioritization out of  
 5 concern for our voters and voter rights and for  
 6 their participation in the process.  
 7 Q. Of course, the secretary of state also didn't  
 8 make any effort to determine how the general  
 9 public was actually accessing the data on the  
 10 website, did it?  
 11 MS. LECOCQ: Objection.  
 12 A. I'm sorry?  
 13 BY MR. GREIM:  
 14 Q. We'll just strike that and move on.  
 15 I want to now change gears a little bit.  
 16 And we'll talk about the -- this allegation of  
 17 disinformation.  
 18 Is it the secretary's position that the  
 19 sharing of out-of-date voter data could  
 20 constitute disinformation?  
 21 A. I think there's a potential, yes.  
 22 Q. Okay. And explain that to us.  
 23 A. Sure. So the voter registration database, the  
 24 voter's file, or the roll as we call it, it's a  
 25 dynamic file. It's ever changing. There are

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1 constant updates being made. And so it's a  
 2 point in time anytime somebody receives that  
 3 data.  
 4 And if we're doing comparisons, I think  
 5 anytime you're analyzing data, it's important  
 6 to be comparing the same type of data, right?  
 7 We can't take something from years ago and look  
 8 at it for a specific election.  
 9 So I think the concern is that outdated  
 10 data does present the potential for  
 11 misinformation.  
 12 Q. Okay. Now, in this case, VRF posted data  
 13 online after winning a preliminary injunction  
 14 from the district court. Do you recall that?  
 15 A. Uh-huh.  
 16 Q. And the data that it posted at that time was  
 17 the only data that it was able to receive  
 18 through your office, right?  
 19 A. Right.  
 20 Q. Now, by that time, that was not the most recent  
 21 information that it had -- that was -- I'm  
 22 sorry. That was not the most recent version of  
 23 the voter file, was it?  
 24 A. No.  
 25 Q. Does the secretary contend that VRF was

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1 engaging in disinformation when it reposted  
 2 that data?  
 3 A. I think it was not the data alone.  
 4 Q. Okay. What else was it?  
 5 A. I feel like there is information explaining the  
 6 data that was not accurate.  
 7 Q. Okay. So when VRF reposted its data online, it  
 8 was not just the data but was the accompanying  
 9 explanation that made it disinformation?  
 10 A. It was the comparison. As I said, I spoke to  
 11 you're comparing -- they were comparing  
 12 outdated data to election results that were --  
 13 it wasn't a correct accurate comparison. There  
 14 wasn't an understanding for the viewer as to  
 15 the details, very important details, to share  
 16 facts about the data.  
 17 Q. Okay. So what you're referring to there is the  
 18 statement that was made about there being a  
 19 discrepancy between the voting credits shown in  
 20 the data file that VRF received and a separate  
 21 data source which was the number of ballots  
 22 cast in the election, right?  
 23 A. Correct.  
 24 Q. So -- and I think we all know what that  
 25 statement was. My question for you is a little

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1 bit different though, okay? And it may be  
 2 that -- it may be that you'll have a different  
 3 answer.  
 4 I'm asking about whether posting the data  
 5 online itself, with no other statement about a  
 6 discrepancy itself, is misinformation?  
 7 A. I think it's important to note that's not what  
 8 happened. So our position on the  
 9 misinformation was tied to the data being  
 10 posted publicly, outdated data, with an  
 11 analysis about a discrepancy that was  
 12 inaccurate. So that was the misinformation  
 13 issue.  
 14 (WHEREUPON, Deposition Exhibit 6 was  
 15 marked for identification.)  
 16 BY MR. GREIM:  
 17 Q. Okay. I don't want to -- I'm just going to  
 18 show you your own interrogatory response. This  
 19 is an earlier set of interrogatories. We're  
 20 going to mark this as Exhibit 6. And if you go  
 21 to page 6 -- by the way, I'll tell you -- I'll  
 22 represent to you that attached here that we do  
 23 have your verified statement for this set of  
 24 interrogatories.  
 25 So on page 6 you'll see there's something

32 (Pages 122 to 125)

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1 called Interrogatory Number 7, and it asks the  
2 secretary of state to "Identify any and all  
3 misinformation, including regarding the 2020  
4 general election, you believe VRF has or  
5 intends to spread on its website VoteRef.com."

6 And so there's a response saying, you  
7 know, we can supplement it, we're still  
8 learning.

9 Then there's a larger paragraph below  
10 there. And the very first sentence says, "The  
11 secretary believes that publication of voter  
12 data writ large may constitute misinformation.  
13 The New Mexico voter file is a living document  
14 that is constantly updated by state and county  
15 agencies. If a private individual or entity  
16 were to obtain a copy of the voter file, that  
17 copy would be out of date and bearing erroneous  
18 information before the private individual or  
19 entity even had a chance to publish the copy.  
20 The only proper, accurate way to look up voter  
21 information is through the New Mexico secretary  
22 of state or county clerks."

23 Did I read that right?

24 **A. Yes.**

25 Q. And that's a statement that you swore to in

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1 voter data may constitute misinformation?

2 **A. And I think my question was: What is your**  
3 **understanding of that definition?**

4 Q. Well, I'm asking you, okay? I -- I mean, this  
5 is your answer. I didn't choose those words.

6 So, I mean, do you agree with me that the  
7 secretary -- and if not, just tell me. I mean,  
8 if the secretary does not contend that posting,  
9 you know, voter data from eight months ago is  
10 itself misinformation, then we can -- we're  
11 going to move on. But it sounds to me like the  
12 secretary is saying that it does constitute  
13 misinformation.

14 **A. I think I answered initially when we started**  
15 **this line of questioning that providing and**  
16 **publishing inaccurate, incomplete, out-of-date**  
17 **data does provide a potential for**  
18 **misinformation.**

19 Q. Okay. And what if -- what if the publication  
20 actually discloses when the data file was  
21 received, does that fix the problem or no?

22 **A. No.**

23 Q. Why not?

24 **A. Because I think that of our election**  
25 **administrators or kind of really -- you know,**

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1 your response to these questions. And is that  
2 still an accurate statement of the secretary's  
3 position?

4 **A. Yes.**

5 Q. Okay. And so let me just go back. I mean, I  
6 understand that -- the allegation that the  
7 analysis that VRF published that accused -- or  
8 that said that there was a discrepancy, the  
9 contention that that is misinformation. I'm  
10 asking you now, though, whether the publication  
11 of voter data writ large as stated in that  
12 response can also constitute misinformation?

13 MS. LECOCQ: Objection.

14 **A. Can you just clarify for me --**

15 BY MR. GREIM:

16 Q. Sure.

17 **A. -- obviously, I didn't use this word -- of what**  
18 **you believe "writ large" is referring?**

19 Q. That's your answer, not mine, right? That's  
20 not my answer, that's your answer.

21 So you say the secretary believes the  
22 publication of voter data writ large may  
23 constitute misinformation.

24 So I'm asking you: Given that statement,  
25 do you agree with me that simply publishing the

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1 the average voter, typically as -- isn't as  
2 educated on this process. You know, we work to  
3 educate them, but I don't think they're going  
4 to understand the complexities if there's  
5 someone who is making a claim of a discrepancy  
6 without context.

7 Q. Okay. And now I'm just -- I'm not asking you  
8 about the discrepancy anymore, okay? We got  
9 your full testimony on that.

10 My question now is: Is the mere fact of  
11 publishing old voter data, putting on the  
12 Internet saying here is the New Mexico voter  
13 data, this file was obtained in April of 2021,  
14 is that misinformation? Is that the  
15 secretary's position in this case?

16 **A. Our position is that it invites and provides**  
17 **for a potential of misinformation.**

18 Q. Because the people who read it are not properly  
19 educated and they may not understand the  
20 disclosure?

21 **A. I think the data, without an understanding or**  
22 **without context or without explanation, makes**  
23 **it difficult to understand.**

24 Q. And the secretary's position is that posting  
25 when and how the data was received isn't

33 (Pages 126 to 129)

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1 enough, correct, to --

2 **A. Correct.**

3 **Q. -- to correct the misinformation?**

4 **A. Yes.**

5 **Q.** Okay. And why is that? It's because -- well,  
6 strike that. You answered why.

7 Does the secretary of state have  
8 information in this case that particular users  
9 of VRF's website were misinformed when viewing  
10 the data and the disclosures online?

11 **A. Sorry, if you can repeat that.**

12 **Q. Does the secretary of state have any**  
13 **information in this case that particular users**  
14 **of VRF were misinformed when accessing the data**  
15 **and the disclosures on VRF's website?**

16 **MS. LECOCQ: Objection.**

17 **A. Not particular users. I think I shared earlier**  
18 **that we had voters contact us out of concern**  
19 **for their data being on the site.**

20 BY MR. GREIM:

21 **Q.** And, right, that's not my question. I'm asking  
22 you about worry that users of VRF are being  
23 misinformed.

24 **A. Did you say worry of it?**

25 **Q.** Yeah. I'm asking whether the secretary of

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1 **Q.** Okay. Do you have any records of this?

2 **A. I can certainly go back and look.**

3 **Q.** We've already asked for it. Do you have -- did  
4 you personally speak to any voters who were  
5 confused about the data online?

6 **A. I do not personally. My team did.**

7 **Q.** Who?

8 **A. I would have to find the phone log, but in**  
9 **particular, we had a paralegal who was tracking**  
10 **things on behalf of the office and he received**  
11 **calls he made me aware of.**

12 **Q.** And you've produced all of your tracking  
13 spreadsheets already, right?

14 **A. Right.**

15 **Q.** When you say voters were confused -- so you  
16 said they were confused about who had actually  
17 posted the data online?

18 **A. Correct. We got voters calling us saying take**  
19 **me off your list that you have on the website.**

20 **Q.** Okay. So maybe VRF engaged in misinformation  
21 by not making it clear that it's VRF's website  
22 and not yours?

23 **MS. LECOCQ: Objection.**

24 **A. We clearly had voters that did not understand**  
25 **who posted that or where it came from and**

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1 state has information that this misinformation  
2 is occurring?

3 **MS. LECOCQ: Objection.**

4 BY MR. GREIM:

5 **Q.** Have you learned that someone has looked at the  
6 VRF website and become misinformed about the  
7 voter process?

8 **MS. LECOCQ: Objection.**

9 **A. As a representative of the office, I can share**  
10 **that anecdotally we received concerned**  
11 **individuals contacting our office asking about**  
12 **discrepancies certainly, and asking about how**  
13 **they could get their data off the site. Those**  
14 **were the calls we were receiving.**

15 BY MR. GREIM:

16 **Q.** Okay. So individuals --

17 **A. Confusion about understanding what was posted,**  
18 **confusion about how it got there. They**  
19 **believed we were posting their data. So there**  
20 **was certainly calls to our office about**  
21 **confusion related to Voter Ref posting data**  
22 **online.**

23 **Q.** Okay. Were they confused about what the data  
24 represented?

25 **A. Yes.**

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1 **believed it was our office.**

2 BY MR. GREIM:

3 **Q.** Okay. The secretary of state doesn't make any  
4 allegation here that VRF is impersonating the  
5 secretary of state or --

6 **A. No.**

7 **Q.** -- trying to act as if it is an official  
8 office?

9 **A. No.**

10 **Q.** Okay. We've noticed online that there's a new  
11 tab that says that the online system has  
12 real-time updates now.

13 **MS. LECOCQ: Objection.**

14 BY MR. GREIM:

15 **Q.** Is that correct?

16 **A. I'm not clear as to what you're referring to.**

17 **Q.** Okay. Going on the secretary of state's  
18 website -- well, you don't have it printed off  
19 here. But let me just ask you: Does the  
20 secretary of state hold out that its website is  
21 up to date, it's like to the minute in  
22 real-time?

23 **MS. LECOCQ: Objection.**

24 **A. I'm just -- I mean, we have a website --**

25 BY MR. GREIM:

34 (Pages 130 to 133)



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1 Q. You have a website --  
 2 **A. -- but I don't know what data would be being**  
 3 **updated in real-time on the website.**  
 4 Q. Okay. Well, there's -- okay. There's a  
 5 website and there's a portal. Let's talk about  
 6 that. Maybe I'm using the wrong term.  
 7 **A. Okay.**  
 8 Q. There is a -- there is a portal, is there not?  
 9 **A. A voter information portal.**  
 10 Q. Right. And is that updated in real-time?  
 11 **A. Yes.**  
 12 Q. Okay. And any person who goes on there who  
 13 enters the correct information for a voter is  
 14 going to get the absolute most up-to-date  
 15 version of voter data for that voter, correct?  
 16 **A. Yeah, that source is our voter registration**  
 17 **database.**  
 18 Q. The database itself?  
 19 **A. Yes.**  
 20 Q. And anyone with the first and last name and  
 21 birthday of a voter can pull that voter's  
 22 information off the website, correct?  
 23 **A. Correct.**  
 24 Q. Now, is the secretary of state aware of anyone  
 25 using its website for an improper purpose?

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1 on the portal, does it?  
 2 **A. I don't believe so.**  
 3 Q. Is the secretary of state aware of anyone using  
 4 VRF's website for illegal purposes?  
 5 MS. LECOCQ: Objection.  
 6 **A. Using the website? Sorry, can you --**  
 7 BY MR. GREIM:  
 8 Q. Sure. Let me back up. So there was a time  
 9 when VRF had New Mexico voter data available on  
 10 its website, correct?  
 11 **A. Correct.**  
 12 Q. And I'm just asking whether the secretary of  
 13 state knows of anyone accessing the voter data  
 14 on VRF's website using it for an improper  
 15 purpose?  
 16 MS. LECOCQ: Objection.  
 17 **A. We wouldn't have a way to track that**  
 18 **information.**  
 19 BY MR. GREIM:  
 20 Q. I understand that. I understand that you don't  
 21 have some special way to look into it. I'm  
 22 just asking if you have any information that  
 23 that's ever occurred?  
 24 **A. And specifically you asked me that somebody was**  
 25 **stalking someone --**

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1 MS. LECOCQ: Objection.  
 2 BY MR. GREIM:  
 3 Q. Let me -- yeah, let me ask you a better  
 4 question.  
 5 Is the secretary of state aware of anyone  
 6 using its website to stalk other people?  
 7 **A. Our website?**  
 8 Q. Yeah, using the portal.  
 9 **A. I don't have any knowledge of that.**  
 10 Q. Okay. Let me -- would the secretary of state  
 11 know if someone were just putting someone's  
 12 name and birthday into the portal and learning  
 13 where they live?  
 14 **A. We wouldn't unless we were made aware.**  
 15 Q. And the secretary of state doesn't require  
 16 people using the portal to certify that they're  
 17 using the information to look up their -- that  
 18 the portal -- to look up their own information,  
 19 do they?  
 20 **A. I haven't walked through the screens in a**  
 21 **while, but I don't recall any sort of**  
 22 **affirmation.**  
 23 Q. In fact, it doesn't require any affirmation  
 24 about the purposes for which someone is  
 25 entering in the information and making a query

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1 Q. Well, I -- yeah, let's start with stalking.  
 2 Are you aware of anyone getting on the VRF  
 3 website and the New Mexico data was posted and  
 4 they were using that information to stalk  
 5 someone?  
 6 **A. I don't have an awareness of somebody stalking**  
 7 **someone off that.**  
 8 Q. Okay. Well -- and let's go to some other  
 9 things, too. Are you aware of anyone getting  
 10 onto the VRF website and using it to come up  
 11 with a list to solicit -- to make commercial  
 12 solicitations?  
 13 **A. I don't have that specific information, no.**  
 14 Q. Okay. I mean, I guess let's just -- I'm not  
 15 going to go through a long list. Is it fair to  
 16 say the secretary of state has no information  
 17 about anyone getting on the VRF website, when  
 18 it had the New Mexico voter data, and using it  
 19 for any improper purpose?  
 20 MS. LECOCQ: Objection.  
 21 **A. You're asking me to kind of -- and just so I'm**  
 22 **clear, are you asking me if we have an**  
 23 **awareness of a connection to a voter being**  
 24 **harassed, stalked, any sort of criminal -- like**  
 25 **when you say improper use --**

35 (Pages 134 to 137)

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1 BY MR. GREIM:

2 Q. Okay. All right. We'll go through. So I'm  
3 asking -- I mean, I asked about stalking  
4 already. I think we got an answer to that  
5 question. Okay.

6 Let's -- let's go criminal purposes.  
7 Does the secretary of state have any  
8 information that any person has gotten on the  
9 VRF website that had the New Mexico voter data  
10 and used that data for a criminal purpose?

11 A. No.

12 Q. Does it have any information that any person  
13 got on the VRF website when it had New Mexico  
14 voter data and used that data to engage in  
15 misinformation about elections?

16 MS. LECOCQ: Objection.

17 A. I don't have any direct knowledge.

18 BY MR. GREIM:

19 Q. Okay. Do you have indirect knowledge that this  
20 happened?

21 A. I think that our office -- you know, we  
22 received calls. I spoke to questions and  
23 concerns from voters. And we also had  
24 individuals that contacted our office at a  
25 similar window of time related to a separate

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1 issue that was taking place in one of our  
2 counties.

3 Q. Who were the voters who called?

4 A. I think we provided the list of any voters that  
5 we received that felt like they were being  
6 potentially intimidated based on an issue  
7 happening in one of our counties.

8 Q. Okay. That's Otero County, right?

9 A. Correct.

10 Q. Does the secretary -- and now it's been well  
11 over a year. Does the secretary of state --  
12 well, that may not be right. It's been some  
13 time.

14 Does the secretary of state's office have  
15 any information that the Otero County group was  
16 connected in any way with VRF?

17 MS. LECOCQ: Objection.

18 A. I don't have any understanding that they were  
19 directly connected, no.

20 BY MR. GREIM:

21 Q. Do you have any --

22 A. I think your question was: Do we believe that  
23 anyone may have obtained data through the  
24 website and used it improperly.

25 Q. That was the original question. Okay. You

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1 said you had indirect knowledge.

2 So let me ask you this: Do you have  
3 any -- my question that you answered, seeming  
4 to have information, was that you didn't know  
5 of any connection between the two groups.

6 Now I'm going to ask you: Do you have  
7 any information at all that the Otero County  
8 group got their data from VRF?

9 MS. LECOCQ: Objection.

10 A. No.

11 BY MR. GREIM:

12 Q. In fact, the secretary of state's office now, I  
13 think, knows how the Otero County group got  
14 their data, doesn't it?

15 MS. LECOCQ: Objection.

16 A. I don't know that we're here to speak on that,  
17 but I don't.

18 BY MR. GREIM:

19 Q. Okay. Do you have any evidence that VRF has  
20 manipulated the data that was posted on its  
21 website?

22 A. No.

23 Q. How many voters have canceled their voter  
24 registration because of VRF's publication of  
25 voter data on its website?

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1 MS. LECOCQ: Objection.

2 A. Aside from the inquiries and the calls and the  
3 log that you've been provided tied to voters  
4 and concerns with this issue, there would be no  
5 way for us to have a voter affirm that.

6 BY MR. GREIM:

7 Q. So let's just be very clear. The secretary of  
8 state has no knowledge of any voter that has  
9 canceled his or her registration because of  
10 VRF's website?

11 MS. LECOCQ: Objection.

12 A. I don't. I think we have knowledge that voters  
13 were concerned --

14 BY MR. GREIM:

15 Q. Okay.

16 A. -- and reached out asking us how they could  
17 remove themselves because they didn't want to  
18 potentially risk their information being made  
19 public. I do not have a list of voters that  
20 have affirmed that they canceled because of  
21 Voter Ref.

22 Q. Any every phone call you received, that inquiry  
23 has been documented and produced to us,  
24 correct?

25 A. Any that staff tracked have been, yes.

36 (Pages 138 to 141)

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- 1 Q. Okay. Do you claim that there are others that  
2 we don't know about that staff didn't track?
- 3 **A. I think, you know, initially when we were first**  
4 **learning about those concerns, we weren't at a**  
5 **place to have that process established. So I**  
6 **do believe there were some additional, but I do**  
7 **feel like the majority were tracked.**
- 8 Q. I'm going to ask you a little bit about the  
9 interest that the secretary of state has  
10 alleged it's trying to advance by enforcing the  
11 statutes at issue here. You've actually  
12 covered a little bit of this already, but  
13 there's a few things we didn't cover.
- 14 So I understand the secretary of state to  
15 contend that the -- that one reason for  
16 requiring the affidavit process that we've  
17 talked about and requiring that users of the  
18 data directly request that from the secretary  
19 of state is in order to generate revenue to run  
20 the voter data system.
- 21 **A. Is that --**
- 22 Q. Is that correct?
- 23 **A. Is that somewhere?**
- 24 Q. Yeah, I don't -- I don't have it. It's in  
25 your -- I mean, I'm just going to ask a

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- 1 question. If you disagree that that's one of  
2 the reasons to enforce it, then that's okay,  
3 we'll just move on. Or if you're not sure,  
4 we'll just move on.
- 5 MS. LECOCQ: Sorry. I just want to note  
6 that our standing objection to legal  
7 contentions are still standing.
- 8 BY MR. GREIM:
- 9 **Q. So is an important reason to require groups**  
10 **like VRF to request the data directly from the**  
11 **secretary of state and then not share it with**  
12 **people outside the organization that the**  
13 **secretary of state wants to generate revenue**  
14 **from user fees to help pay for the voter data**  
15 **system?**
- 16 MS. LECOCQ: Objection.
- 17 **A. I think from the office's perspective, I think**  
18 **that's a reason. That is not our primary**  
19 **reason by any means.**
- 20 BY MR. GREIM:
- 21 Q. Okay. But it's one of the reasons?
- 22 **A. It is a reason to make sure we have revenue to**  
23 **maintain our system, but that is absolutely not**  
24 **the priority.**
- 25 Q. What would you say -- what is the priority?

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- 1 What is the main reason that the secretary of  
2 state does not want VRF to be able to request  
3 the data from the secretary of state's office  
4 and then share it online with people who agree  
5 to use it for VRF's purposes? What's -- what's  
6 the reason why the secretary of state wants to  
7 enforce that?
- 8 MS. LECOCQ: Same objection.
- 9 **A. Sure. The secretary of state's office wants to**  
10 **follow state law. We want to ensure that we**  
11 **are adhering to the appropriate process that's**  
12 **defined in our state law. And we feel like the**  
13 **intention behind an appropriate administration**  
14 **of that provision provides for us to maintain a**  
15 **record of individuals that are requesting the**  
16 **data.**
- 17 **I think it's important because it's the**  
18 **only mechanism to be able to go back and track**  
19 **if somebody does use it unlawfully. If we do**  
20 **see an instance of stalking or harassment or**  
21 **intimidation, it is the only way that we have**  
22 **an ability to manage who is receiving that data**  
23 **and potentially a tool for enforcement to**  
24 **follow the law. That's our priority.**
- 25 BY MR. GREIM:

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- 1 Q. And has the secretary of state actually used  
2 its record of individuals who requested the  
3 data to investigate instances of harassment?
- 4 MS. LECOCQ: Objection.
- 5 **A. Yes.**
- 6 BY MR. GREIM:
- 7 Q. It did so in the Otero County case, right?
- 8 **A. Correct.**
- 9 Q. Other than Otero County, has it done it any  
10 other time?
- 11 **A. Other than a review -- not for harassment, but**  
12 **we did take a look at our logs when we felt**  
13 **like there was a potential violation by**  
14 **Voter Ref by posting it online. That was**  
15 **another opportunity for us to refer to that**  
16 **record. And we were able to identify that it**  
17 **had not been lawfully obtained.**
- 18 Q. So Otero County and VRF. Any other examples?
- 19 **A. The Local Labs in the distribution of the data.**
- 20 Q. Okay. The Otero County and VRF, Local Labs,  
21 any other examples?
- 22 **A. No.**
- 23 **Q. Okay. So does the secretary of state require**  
24 **Catalist or i360 or Aristotle to share the**  
25 **identities of its customers who purchased the**

37 (Pages 142 to 145)

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1 data?

2 **A. I don't think we require any requester to**

3 **identify anything more than what's on the**

4 **affidavit.**

5 **Q. Well, let's say the secretary of state did**

6 **require their requesters to keep a log of each**

7 **person who shared the data with them. Why**

8 **wouldn't that equally satisfy your interest of**

9 **being able to trace possible abuses?**

10 **A. Number one, we don't require that.**

11 **Q. I understand. I'm asking why wouldn't**

12 **requiring that yield the same result?**

13 **A. Because it's not following the statute.**

14 **Q. I understand that. I understand what the**

15 **statute says. My question is: Why wouldn't**

16 **requiring the requesters who first get the data**

17 **to keep a log of who they share it with achieve**

18 **the same result of compiling a record of people**

19 **who access the data?**

20 **MS. LECOCQ: Objection.**

21 **A. I think that we're -- there's only -- that's**

22 **one piece of the statute, right? There's a**

23 **secondary piece that requires a payment. And**

24 **there's also a secondary piece that requires an**

25 **affirmation of that separate entity to affirm**

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1 **that they will also comply with the statute.**

2 **BY MR. GREIM:**

3 **Q. Okay. And I -- we'll get to the other uses of**

4 **the statute. I'm sticking right now to the**

5 **interest in being able to trace who had access**

6 **to the data, okay? I'm not asking about**

7 **payment right now. I'm asking about why -- I**

8 **mean, and if you don't know, you don't know.**

9 **But my question is: Why wouldn't requiring the**

10 **requesters to maintain a record of individuals,**

11 **whom they share the data, yield the same**

12 **benefit as keeping your own list of the initial**

13 **set of requesters? Either way you've got a**

14 **list of everybody who accessed the data.**

15 **MS. LECOCQ: Objection.**

16 **BY MR. GREIM:**

17 **Q. Why isn't it good enough to have the requesters**

18 **keep their own list?**

19 **A. Sure. That's one piece of my answer, but I**

20 **gave you other reasons. So there was, you**

21 **know, a broader picture. And so we can't just**

22 **point to one piece of the statute, right? We**

23 **are required to administer the statute in its**

24 **entirety --**

25 **Q. I know.**

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1 **A. -- and so that's our obligation, that's our**

2 **authority. And the hypothetical that you're**

3 **speaking to just isn't reality.**

4 **Q. Well, I'm asking about the State's interest.**

5 **I'm not asking you what the statute says. In**

6 **this case, on the constitutional question there**

7 **are questions of fact about what is the State's**

8 **interest and is this the most narrowly tailored**

9 **version of a law. Okay. So I'm not asking you**

10 **anymore about what the law says. I'm asking**

11 **you about what does the State lose -- how is**

12 **the State worse off by simply having the**

13 **requesters keep a record of the individuals to**

14 **whom they grant access so that if there is an**

15 **illegal use the secretary of state can simply**

16 **go to the requesters and say who have you**

17 **shared it with?**

18 **MS. LECOCQ: Objection.**

19 **BY MR. GREIM:**

20 **Q. Why is that insufficient to meet the interest**

21 **that you raised regarding tracing who dealt**

22 **with it?**

23 **MS. LECOCQ: Objection.**

24 **A. And I would just reiterate that that's one**

25 **interest. So what we lose is the opportunity**

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1 **to kind of respond to all of our interests,**

2 **right? That's not our only interest.**

3 **BY MR. GREIM:**

4 **Q. Okay. Let's go ahead -- let's talk about the**

5 **other interests then. So you lose the ability**

6 **to generate revenue from the other requesters,**

7 **right?**

8 **A. Sure.**

9 **Q. Okay. And what else do you lose, if there's**

10 **other things you lose, too? You mentioned**

11 **something else earlier.**

12 **A. I don't remember saying that we lose**

13 **anything --**

14 **Q. Let me -- I'll help you. You said -- I think**

15 **you said there's the State interest in making**

16 **sure that the individuals who get access to the**

17 **data agree to use it for the purposes that are**

18 **permitted under New Mexico law. You didn't use**

19 **those words, but I think that's what you were**

20 **getting at. Do you recall that?**

21 **A. And I think, you know, you asked me what's our**

22 **priority, what's our interest, and I think I**

23 **said first and foremost it's to follow the**

24 **state law. And so I'm just reiterating that**

25 **that is our interest. And there's not just**

38 (Pages 146 to 149)

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1 **this one provision, you know, it is a bigger**  
 2 **picture than that.**  
 3 Q. I understand. And we can stipulate that the  
 4 secretary of state's office says that it wants  
 5 to follow the state law. You've said that.  
 6 That's not what I'm talking about, though.  
 7 That's not what these questions go to. I'm  
 8 trying to understand the interest.  
 9 So we've talked about the payment  
 10 interest. We've talked about the tracing  
 11 interest. And I'm trying to get you now to  
 12 talk about the third interest that I could  
 13 swear I heard you say, I think I've read in  
 14 your briefing, which is the State wants to have  
 15 some way to ensure that the people who receive  
 16 access to the data are going to use it for the  
 17 purposes that are allowed under the statute.  
 18 Do you agree that that's --  
 19 **A. I agree.**  
 20 Q. That's an important State interest, isn't it?  
 21 **A. Yes.**  
 22 Q. Okay. And the way that you satisfy that  
 23 interest now is by having the person who  
 24 directly contacts the SOS's office sign the  
 25 affidavit that lists what the purposes are,

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1 same use requirements that the initial  
 2 requester manifested their assent to. So  
 3 what's lost by having the person who receives  
 4 it is from initial requester agree to the same  
 5 conditions?  
 6 **A. Like, by how -- like, through what mechanism?**  
 7 Q. Well, for example, by on the website saying I  
 8 agree to only use it for these purposes before  
 9 getting access to it?  
 10 **A. I think, number one, for uniformity, generally,**  
 11 **it's important that when our office is**  
 12 **prescribing a form, it's our official form, I**  
 13 **think we want to maintain that uniformity and**  
 14 **consistency of the election polls overall.**  
 15 **But, two, I think we lose the opportunity to**  
 16 **educate directly from our office and to receive**  
 17 **that affirmation directly to our office.**  
 18 Q. Okay. So there's some benefit in the fact that  
 19 the form comes directly from the office?  
 20 **A. Consistent and it's uniform.**  
 21 Q. Okay. Okay, so -- okay, I understand. Any  
 22 other interests there, other than uniformity?  
 23 **A. Not in addition to what we've already gone**  
 24 **over.**  
 25 Q. Okay. Let me ask you about the Safe at Home

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1 right?  
 2 **A. Whoever is going to receive the data, completes**  
 3 **the affidavit affirming those items.**  
 4 Q. Okay. And so my question to you -- and you  
 5 would agree that, from the State's perspective,  
 6 that is sufficient -- the affidavit is  
 7 sufficient to satisfy the State's interest in  
 8 ensuring that the recipients of the data who  
 9 came and requested it from the secretary of  
 10 state's office, understand that what they're  
 11 supposed to do and not do with the data, right?  
 12 **A. Yes.**  
 13 Q. And so my question to you is: How does the  
 14 State lose anything by having the individuals  
 15 who might receive access to the data from the  
 16 initial requesters also agree that they are  
 17 going to use it for the purposes permitted  
 18 under New Mexico law? What's lost there from  
 19 the State's perspective?  
 20 MS. LECOCQ: Objection.  
 21 BY MR. GREIM:  
 22 Q. If anything?  
 23 **A. Are you saying also agreed, what, through a**  
 24 **different entity?**  
 25 Q. Yeah, they manifest their assent to the extent

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1 program; that's come up a few times as well.  
 2 There are some people who want to be removed  
 3 from the list who don't satisfy the  
 4 Safe at Home program, correct?  
 5 **A. Correct.**  
 6 Q. And so is anything stopping New Mexico from  
 7 changing the requirements of the Safe at Home  
 8 program?  
 9 MS. LECOCQ: Objection.  
 10 BY MR. GREIM:  
 11 Q. Let me -- let me change the question. Is there  
 12 anything keeping New Mexico from broadening the  
 13 Safe at Home program to reach additional people  
 14 who don't want their voter data disclosed?  
 15 MS. LECOCQ: Objection.  
 16 **A. Yes.**  
 17 BY MR. GREIM:  
 18 Q. What?  
 19 **A. So I think that the statute surrounding the**  
 20 **Safe at Home program is very specific to a**  
 21 **certain population within the state of New**  
 22 **Mexico.**  
 23 Q. Okay. And my question is: Is there anything  
 24 stopping New Mexico from just broadening that  
 25 population --

39 (Pages 150 to 153)



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1 MS. LECOCQ: Objection.  
 2 BY MR. GREIM:  
 3 Q. -- and saying there are other people now that  
 4 we want to let into the Safe at Home program?  
 5 **A. Sure. It's -- the Safe at Home program is not**  
 6 **specific to just voting, right; that's one**  
 7 **piece of that program. But it is a larger**  
 8 **program that is meant to support victims of**  
 9 **domestic violence. So it's not just a**  
 10 **confidential address necessarily. It is -- it**  
 11 **is not just specific to voting.**  
 12 Q. Okay.  
 13 **A. So there are implications for that population**  
 14 **outside of just voting.**  
 15 MR. GREIM: Okay. We've been going for  
 16 little over an hour. Why don't we take --  
 17 let's take one more break for maybe another ten  
 18 minutes.  
 19 (WHEREUPON, at this time a brief recess  
 20 was taken.)  
 21 BY MR. GREIM:  
 22 Q. All right. I think we're getting closer here  
 23 to the end. But I'm going to ask you about now  
 24 the denials of VRF requests for data over the  
 25 last year or two.

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1 I want to first know who was involved,  
 2 what staff were involved in the secretary's  
 3 office in responding to VRF requests for data.  
 4 **A. Myself and our attorneys.**  
 5 Q. Okay. You say our attorneys. Who are those  
 6 attorneys?  
 7 **A. Dylan Lange and representation from the**  
 8 **attorney general's office.**  
 9 Q. Okay. Okay. Now, when you say representation  
 10 from the attorney general's office, are you  
 11 talking about -- is that -- is the secretary of  
 12 state getting legal advice from the attorney  
 13 general's office about whether to respond to  
 14 requests?  
 15 MS. LECOCQ: Objection.  
 16 **A. With relation to this case?**  
 17 BY MR. GREIM:  
 18 Q. Okay. Well, let me -- I'm not going to ask you  
 19 the contents of the advice. I'm just wanting  
 20 to establish who is asking the question and,  
 21 you know, basically who is involved in the  
 22 communication, okay?  
 23 So we know the name of one attorney,  
 24 Lange, okay. And then when you say the AG's  
 25 office, I'm trying to make sure we're not just

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1 talking about litigation counsel who was always  
 2 up to speed presumably on what's happening. So  
 3 I'm trying to do with this without compromising  
 4 the privilege.  
 5 Is a request being made of the attorney  
 6 general's office about whether a response to a  
 7 document request is lawful or not?  
 8 MS. LECOCQ: Objection.  
 9 **A. A response to a document request from Voter**  
 10 **Reference Data -- I mean vote Voter Reference**  
 11 **Foundation --**  
 12 BY MR. GREIM:  
 13 Q. Right.  
 14 **A. Yeah, our -- Dylan Lange and our attorneys**  
 15 **representing us in this case.**  
 16 Q. Okay. So litigation counsel are -- the lawyers  
 17 in this case for the attorney general's office  
 18 are giving advice to the secretary of state  
 19 about responses to the requests?  
 20 MS. LECOCQ: Objection. Can we -- sorry,  
 21 can you just give me one second?  
 22 MR. GREIM: Sure.  
 23 MS. LECOCQ: I just want to state on the  
 24 record this is getting really close to -- and I  
 25 understand it's super tricky with the attorney

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1 general's office, but the attorney general's  
 2 office, by statute, represents these agencies.  
 3 So if what you're wanting her to answer is who,  
 4 I don't think we have any issue with that. I  
 5 think where it gets a little bit tricky is  
 6 any -- kind of anything beyond that, you know,  
 7 what questions were asked, what specific  
 8 topics, what's being sought, and that's really  
 9 what is, kind of, our objection.  
 10 MR. GREIM: I'm not going to be beyond  
 11 the question I just asked.  
 12 MS. LECOCQ: Okay.  
 13 BY MR. GREIM:  
 14 Q. Which is, you know, advice on responding to the  
 15 request, not asking what the advice was or what  
 16 questions were lodged. It's who at the AG's  
 17 office is giving advice on how to respond to  
 18 the VRF request. That's it.  
 19 **A. What individual?**  
 20 Q. Yes.  
 21 **A. Yeah, at the time was Olga.**  
 22 Q. Okay. And she was still there in November or  
 23 she was gone?  
 24 **A. I don't know the exact day, I'm sorry.**  
 25 Q. Okay. Was it anyone other than Olga?

40 (Pages 154 to 157)

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1 **A. No.**  
 2 Q. Okay.  
 3 **A. Just Dylan and Olga.**  
 4 Q. Sharon Pino involved at all?  
 5 **A. Yes.**  
 6 Q. Okay. What was her role?  
 7 **A. Again, it's a collaborative effort to kind of**  
 8 **understand all of the facts, have a**  
 9 **conversation, a discussion, and make a**  
 10 **determination. So she participated like the**  
 11 **rest of us.**  
 12 Q. Well, who made the final decision in the SOS's  
 13 office?  
 14 MS. LECOCQ: Objection.  
 15 **A. I don't think there was one single person. It**  
 16 **was, again, a collaborative decision.**  
 17 BY MR. GREIM:  
 18 Q. Okay. If you could, please go back and turn to  
 19 Exhibit 2, Interrogatory Number 15. It's on  
 20 page 9 -- 9 and 10 is where I want you to look.  
 21 Okay. And so you'll see Interrogatory Number  
 22 15, it says, "Identify each person who  
 23 participated in each decision not to provide  
 24 data in response to a VRF request or to ignore  
 25 a VRF request, and the person, if any, who made

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1 need to be changed, decision to do so was made  
 2 by Sharon Pino?  
 3 **A. I think the only thing I would add is, you**  
 4 **know, probably upon advice of counsel and, I**  
 5 **guess, in consultation with myself.**  
 6 Q. Okay. And let me talk about the  
 7 decision-making process. Did it occur by  
 8 e-mail?  
 9 **A. No, I feel like it was a meeting, either**  
 10 **virtual -- it was a virtual meeting.**  
 11 Q. Okay. Because there were a couple of denials,  
 12 all right. And so each time there was nothing  
 13 committed to writing. It was all done orally?  
 14 **A. Yes.**  
 15 Q. Okay. So there will be no -- have you searched  
 16 for documents that discussed the decision?  
 17 **A. No, but I don't believe there to be any. I**  
 18 **recall the verbal conversations.**  
 19 Q. I mean, do you know all the decision -- all the  
 20 communications that Sharon Pino may have had  
 21 with others about it?  
 22 **A. I don't believe Sharon Pino had any additional**  
 23 **communications. The only thing I can't speak**  
 24 **to is if Dylan had any communications, but I**  
 25 **feel like the decision was made through a**

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1 the final decision." And then it wants the  
 2 titles. That's the request.  
 3 And now let's go to the answer, next  
 4 page. "Subject to, and without waving  
 5 objections, the secretary states the secretary  
 6 never ignored a request." Is that correct?  
 7 **A. Yes.**  
 8 Q. Okay. "If such a request was received,  
 9 reviewed, and subsequently denied, the decision  
 10 to do so was made by Sharon Pino on advice of  
 11 counsel." Now, is that correct or no?  
 12 **A. I don't think it's incorrect. Again, you know,**  
 13 **we all had a role in making this decision. At**  
 14 **the end of the day, Sharon is deputy secretary**  
 15 **of state, so I don't think there's anything**  
 16 **incorrect here.**  
 17 Q. Okay. Just -- since Sharon Pino is the only  
 18 person to -- specifically mentioned here, it's  
 19 just odd that you didn't mention her in your  
 20 response and then you seemed to say she was  
 21 just part of the team. So I've got a response  
 22 from you and I've got a -- sort of a draft from  
 23 counsel. I just want to meld the two, if I  
 24 can.  
 25 I mean, do you -- does this statement

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1 **virtual meeting.**  
 2 Q. And the decision was not made by lawyers,  
 3 right, it was made by Sharon Pino?  
 4 **A. That's not what I said. I said it was made in**  
 5 **consultation with a group of us, including**  
 6 **guidance from our attorneys.**  
 7 Q. Okay. Well, I mean, was Sharon Pino the final  
 8 decision maker or no?  
 9 **A. I think what I asked to be changed in the**  
 10 **statement was that Sharon Pino, upon advice of**  
 11 **counsel, in consultation with Mandy Vigil.**  
 12 Q. Okay.  
 13 **A. So I think that represents my testimony.**  
 14 Q. Okay. Well, specifically, I'm going to be very  
 15 clear about this, the decisions were not  
 16 actually delegated to counsel; they were made  
 17 by you and Sharon Pino?  
 18 **A. Upon advice of counsel.**  
 19 Q. Upon advice of counsel?  
 20 **A. Yes.**  
 21 Q. Okay. Okay. Well, I'm about to ask you the  
 22 basis for the decision, okay? And I'm just  
 23 going to say this, I mean, I -- if you say, you  
 24 know -- if you say "We relied on counsel," then  
 25 I'm going to ask -- at that point I'm entitled

41 (Pages 158 to 161)

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1 to ask and I'm going ask what counsel advised,  
 2 one way or another, from you or from counsel.  
 3 If you just tell me the basis of the decision,  
 4 you don't need to tell me that, well, part of  
 5 this was what counsel wanted or this is -- and  
 6 you can protect the privilege by not explaining  
 7 to me what parts of what you tell me are from  
 8 an attorney. I'm just going to say that while  
 9 we're on --

10 MS. SCHREMMER: I object to your  
 11 definition about privileged communication.  
 12 BY MR. GREIM:

13 Q. I mean, maybe we have a dispute. We're about  
 14 to find out, I think. But I certainly don't  
 15 think any part of the reasoning -- the basis  
 16 for any of the decisions can be shielded  
 17 because a lawyer was involved. It's possible  
 18 to tell me the reasoning without saying, oh,  
 19 this is what our lawyer told us, but we'll see.  
 20 We'll let it play out if there needs to be an  
 21 objection and instruction.

22 MS. LECOCQ: Can you give me one second?  
 23 We might -- let me talk to Kelsey. And then I  
 24 might just give her a little bit of advice.

25 MR. GREIM: Sure. Okay. Let's go off

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1 **A. I reached out to Dylan.**

2 Q. Okay. Did you ask him for legal advice of some  
 3 kind?

4 **A. Yeah.**

5 Q. Okay. Did he provide you legal advice in  
 6 response?

7 **A. Yes.**

8 Q. All right. And is the first line of this  
 9 e-mail correct for Dylan's contact with the AG,  
 10 "...we are not fulfilling records from VoteRef"  
 11 (verbatim)?

12 **A. There was clarification related to voter data  
 13 requests, but, yes.**

14 Q. Okay. And has this policy ever changed at the  
 15 secretary of state's office?

16 **A. What policy?**

17 Q. "Per Dylan's contact with the AG, we are not  
 18 fulfilling records request from VoteRef"?

19 **A. I don't think it was a policy, but certainly it  
 20 is based on legal advice related to this case  
 21 and our understanding of the use of the data  
 22 that that's still the position we maintained.**

23 Q. Okay. What will VRF need to do in order to  
 24 obtain voter information from the secretary of  
 25 state's office?

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1 the record for two minutes.  
 2 (WHEREUPON, at this time a brief recess  
 3 was taken.)

4 (WHEREUPON, Deposition Exhibit 7 was  
 5 marked for identification.)

6 BY MR. GREIM:

7 Q. Okay. I'm going to hand you what we've marked  
 8 as Exhibit 7, and you've seen this before. I'm  
 9 just going to ask you if you recognize this  
 10 e-mail?

11 **A. I do.**

12 Q. Okay. This is a Patrick Rostock e-mail to you  
 13 on March 11, 2022?

14 **A. Yes.**

15 Q. And it relates to ticket number 4148 (sic).  
 16 I'm just reading from the subject line,  
 17 "[External] Information Request," right?

18 **A. Right.**

19 Q. And you see there's a question from Voter  
 20 Reference Foundation at the bottom of the  
 21 e-mail chain?

22 **A. Uh-huh.**

23 Q. And then -- do you recall getting this e-mail?

24 **A. Yes.**

25 Q. Okay. What did you do in reaction to this?

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1 **A. I think it is going to need some clarity from  
 2 legal counsel to respond to that. I think it's  
 3 all relevant to this case in particular.**

4 Q. Well, why can't VRF simply fill out the current  
 5 affidavit and receive voter data?

6 **A. We have not stated that you cannot.**

7 Q. Well, that's -- I'm asking you that. I'm  
 8 asking you, even if the current -- I mean, we  
 9 have a dispute about whether the current  
 10 affidavit actually follows New Mexico law, but  
 11 put that aside. If VRF simply fills out the  
 12 current affidavit for voter data, is there  
 13 any -- is there any reason that the secretary  
 14 of state's office wouldn't fill the request?

15 **A. Again, I think barring any guidance from our  
 16 attorney related to this case, no. I think our  
 17 concern is relevant in that there's an  
 18 understanding that it will be posted online;  
 19 that's the concern.**

20 Q. So even if VRF fills out an affidavit that says  
 21 "I won't share it on the Internet," VRF is not  
 22 going to get the data because of a concern that  
 23 it might show on the Internet anyway?

24 **A. I don't think I said that.**

25 Q. Well, I want to understand you.

42 (Pages 162 to 165)



Page 166

- 1 **A. So if VRF submits an affidavit and completes**  
 2 **it, I think there is a review of that affidavit**  
 3 **and a determination to provide the data.**  
 4 Q. When you say it --  
 5 **A. I don't think I've said that we wouldn't.**  
 6 Q. Okay. Well, that's important because I thought  
 7 my question actually posed that very  
 8 hypothetical, that VRF fills out the affidavit  
 9 and submits it to you. I just wonder if  
 10 there's any reason why the secretary of state  
 11 would still not produce the data.  
 12 **A. It would only be based on legal guidance.**  
 13 Q. Well, in other -- when you say only based on  
 14 legal guidance, you mean you're holding out  
 15 that attorneys might tell you not to produce  
 16 the data anyway?  
 17 **A. I think there's a potential, yes, based on**  
 18 **concerns of it being posted online.**  
 19 Q. Okay. So is VRF in a position where the  
 20 secretary of state doesn't feel that it can  
 21 trust VRF's affidavit?  
 22 MS. LECOCQ: Objection.  
 23 **A. What affidavit, I'm sorry?**  
 24 Q. The affidavit we've just been talking about.  
 25 **A. Ours, our prescribed form, completing it?**

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- 1 Q. Correct.  
 2 **A. But in that you are saying you're going to make**  
 3 **some sort of affirmation that you're not going**  
 4 **to put it online?**  
 5 Q. No, no. I'm saying if VRF -- I want to be  
 6 clear here. I thought we were, but I -- it  
 7 seems vague.  
 8 If VRF fills out the current affidavit --  
 9 on -- currently online, for the secretary of  
 10 state, is there any reason at all that the  
 11 secretary of state would cite to still refuse  
 12 to produce the voter data to VRF?  
 13 **A. And, again, I said as long as the form is**  
 14 **completed and we consult with our attorney, if**  
 15 **there is no concern related to it being posted**  
 16 **online, based on the circumstances of this**  
 17 **case, I foresee no reason to deny that.**  
 18 Q. Okay. Well, it's that middle hedge that is  
 19 very important in this case.  
 20 **A. Well, that's the reality.**  
 21 Q. Well, I mean, so would the secretary of  
 22 state -- so what you're telling me is, in fact,  
 23 the secretary of state would not simply produce  
 24 the data if it received an affidavit, it would  
 25 first talk to counsel and determine whether

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- 1 there was still a concern that VRF might post  
 2 the data online anyway?  
 3 **A. There's currently active litigation with Voter**  
 4 **Reference Foundation, so any interaction we**  
 5 **would engage with our legal counsel, yes.**  
 6 Q. Okay. So part of the -- so it sounds like part  
 7 of the block for VRF getting the data is the  
 8 fact that there's ongoing litigation, is that  
 9 correct?  
 10 **A. I don't know if there is a block. I'm saying**  
 11 **because there is active litigation, it is a**  
 12 **usual process to consult with our attorneys.**  
 13 Q. Okay, fair enough. But can the secretary of  
 14 state commit right here, right now, that if VRF  
 15 fills out the affidavit, as required by New  
 16 Mexico law, it will produce the data requested?  
 17 MS. LECOCQ: Objection.  
 18 **A. I think I have responded that because there's**  
 19 **an active litigation, that we would seek**  
 20 **guidance from our counsel.**  
 21 **(WHEREUPON, Deposition Exhibit 8 was**  
 22 **marked for identification.)**  
 23 BY MR. GREIM:  
 24 Q. I'm going to hand you what we've marked as  
 25 Exhibit 8. Do you recognize this document?

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- 1 **A. I do.**  
 2 Q. What is this?  
 3 **A. It is a request to our office for records.**  
 4 Q. Okay. And it is accompanied by -- something  
 5 might be wrong. Can I look at your version  
 6 quickly? It's accompanied by a couple of  
 7 affidavits, correct, under Exhibit B?  
 8 **A. Yes.**  
 9 Q. Now, take a second to look at these affidavits.  
 10 Is there anything irregular or altered in these  
 11 two affidavits?  
 12 **A. I don't believe this is our most current form.**  
 13 **I think this is an outdated version.**  
 14 Q. Okay. Is that a reason to reject a request?  
 15 **A. No.**  
 16 Q. And, in fact, do you recall when I asked you  
 17 this at your earlier testimony you stated that  
 18 secretary of state would accept all versions of  
 19 the form as it changed over time, right?  
 20 **A. Correct, as long as it provides the**  
 21 **information.**  
 22 Q. And is there anything lacking on these two  
 23 affidavits?  
 24 **A. No.**  
 25 Q. Okay. Now, this request was denied, right?

43 (Pages 166 to 169)

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1 **A. Yes.**

2 Q. I'm going to -- and one of the reasons was that  
3 the secretary of state was concerned that VRF  
4 was going to take the information and post it  
5 online, right?

6 **A. Right.**

7 Q. Okay. And the basis for that was actually  
8 something that I put in my letter, right?

9 **A. Basis for?**

10 Q. For the concern.

11 **A. Yes.**

12 Q. All right. And specifically it's page 4 of my  
13 letter. Can you go to page 4?

14 **A. Okay.**

15 Q. And let's go to the third paragraph where I  
16 talk about the request for records. And you'll  
17 see that it's about two different projects,  
18 above there, and then I say in my third  
19 paragraph -- or, I'm sorry, the second full  
20 unnumbered paragraph, "VRF's intended election  
21 use comprises two distinct projects. For its  
22 first project, just as VRF publishes voter data  
23 for many other states, and as it recently  
24 published voter data in New Mexico, VRF intends  
25 to publish the requested information online for

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1 description, the second one has a different  
2 one, right?

3 **A. One is asking for county and precinct, is that  
4 the difference?**

5 Q. Right. So, I mean, if you look, the first one  
6 says "Current voter registration data,  
7 including voter history for all active,  
8 inactive, suspended, and canceled status  
9 voters," right, "(including any registration  
10 status other than active)," that's the first  
11 one?

12 **A. Uh-huh.**

13 Q. The second one says "A complete list, by  
14 county/precinct of any registered voters who  
15 cast a ballot in the November 3, 2020 general  
16 election, who have subsequently been placed in  
17 inactive, canceled, deleted, or removed status,  
18 or any voter that has been removed or deleted  
19 from the rolls."

20 So those are not asking for the same  
21 data, are they?

22 **A. No.**

23 Q. All right. Fair enough. Okay. Let's come  
24 back now to my letter. In my second paragraph  
25 I say, "VRF intends to analyze the records,

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1 election related purposes, but will only  
2 publish the personal information of voters  
3 online if VRF is granted relief in..." and then  
4 it cites this case, right?

5 **A. Uh-huh.**

6 Q. "...or any other legal proceeding."

7 Okay. So did the secretary of state's  
8 office decide that it believed that statement  
9 was truthful?

10 **A. No.**

11 Q. Did not doubt what I put in my letter?

12 **A. I don't think there was any discussion of  
13 doubt.**

14 Q. Okay. Okay. And then we go to the fourth  
15 paragraph, I talk now about the second project.  
16 And its says, "For its second" -- and by the  
17 way, data for the first project is in a  
18 separate safety affidavit, isn't it? You see  
19 there's two affidavits?

20 **A. There are two affidavits. I am not clear what  
21 is specific to each project.**

22 Q. Okay. Okay. Well, that's all right. That's  
23 all right. You see that each --

24 **A. They each ask for the same data.**

25 Q. Do you see the first one under "Other" has one

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1 information, and data provided in response to  
2 the above requests in order to engage in a  
3 discrepancy review of the New Mexico voter  
4 rolls. VRF intends to publish this analysis  
5 online without disclosing the personal  
6 information of any individual voter."

7 Do you see that correct -- did I read  
8 that correctly?

9 **A. I do.**

10 Q. Okay. And then I go on, just so it's clear,  
11 "VRF will comply with this  
12 non-public-disclosure promise for the data it  
13 uses on its second project regardless of  
14 whether it prevails in the federal litigation."

15 Did I read that right?

16 **A. You did.**

17 Q. "And again, for the sake of clarity, no  
18 personal information of any individual voter  
19 will be published online unless VRF is granted  
20 relief in the federal litigation or in any  
21 other legal proceeding."

22 Did I say that right?

23 **A. You read it correctly, yes.**

24 Q. And the secretary's position is that you didn't  
25 know what I meant by personal information,

44 (Pages 170 to 173)

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1 right?

2 **A. Uh-huh.**

3 Q. And that what I have might have actually been

4 saying is that we are going to publish personal

5 information because I might have a really

6 narrow definition of what it means, right?

7 **A. Uh-huh.**

8 Q. Now, did anybody from the secretary's office

9 say -- it was an unclear phrase, right, that's

10 your position?

11 **A. I think we established that during this**

12 **testimony as well.**

13 Q. Right. And did anyone ever reach out to ask

14 Voter Reference Foundation, hey, we see this

15 phrase "personal information," you're

16 referencing the lawsuit, where we're actually

17 litigating this question, could you tell us

18 what you mean?

19 No one did that, did they, for VRF?

20 **A. I don't believe anyone from our office did.**

21 Q. No. And then, in court, VRF then stated that

22 we're not going to disclose name or address,

23 anything from which you could tell the identity

24 of any voter. We're just going to give the

25 analysis of what the discrepancy was. And at

Page 175

1 that point did the secretary of state's office

2 go back and say now we understand? We're no

3 longer concerned about posting personal

4 information online? Did that ever happen?

5 **A. We have not revisited this, no. I think,**

6 **again, the decision we've been discussing for**

7 **the past hour or so was based on guidance from**

8 **our counsel, based on pending litigation, and**

9 **the requests received, you know, in response to**

10 **this litigation.**

11 Q. So the reason why the secretary didn't go back

12 and produce the data, after getting the

13 explanation of personal information, was

14 because of the litigation, is that right?

15 **A. No, based on our outreach to our counsel,**

16 **because there is pending litigation. So we are**

17 **going to follow the guidance of our counsel.**

18 Q. Okay, I understand. And, unfortunately, I now

19 need to know the reason why you didn't do it.

20 I know you asked counsel. I need to now

21 understand why -- clarification. Because,

22 after that, you knew we weren't going to be

23 posting any personal information online, why

24 that wasn't good enough. What was still

25 missing at that point?

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1 **A. And when you say we knew, can you point me to**

2 **where we would know that?**

3 Q. Sure. You know, let's do it this way: Today,

4 does the secretary of state's office believe

5 that if we got -- if you fulfil this status

6 request tomorrow, maybe somebody saw this and

7 thought it was -- you know, they just answered

8 it. Do you believe that -- do you believe that

9 VRF would take the data and post the names,

10 addresses, year of birth, voter registration

11 information of voters online? Does the

12 secretary of state's office actually believe

13 that today?

14 **A. I don't think that's the question. I think --**

15 Q. I'm asking you that right now.

16 **A. I think it's broader than that, that's my**

17 **point. There's active litigation, and we have**

18 **to -- we have to deal with the reality. Our**

19 **office is currently engaged in important**

20 **litigation on this matter. We've received**

21 **guidance from our counsel, period.**

22 Q. Well --

23 **A. And same answer to your question about the**

24 **affidavit. This request is a request for the**

25 **same data, the same question that you asked me**

Page 177

1 **about the affidavit and that process and our**

2 **position would not change. Based on this**

3 **letter, it was an NVRA request for the**

4 **affidavit that was submitted.**

5 Q. I'm going to ask you a very different question.

6 Okay. My question is: Today, does the

7 secretary of state believe that if it produced

8 to us the data requested here, now that you've

9 heard what I've said -- actually, let me do

10 this. Let's back up.

11 I'm going to tell you -- this is not a

12 hypothetical, okay? I'm going to tell you that

13 if the secretary of state produces data in

14 response to this request, any other request

15 that comes in, using your affidavits, that

16 Voter Reference Foundation is not going to

17 publish any of the personal information of any

18 voter. I'm going to go a step further, just in

19 case you think I'm saying the opposite. It's

20 not going to post the voter's name, their

21 address, their voting history, their last four

22 of their Social Security number, their year of

23 birth. Can you name for me any other personal

24 information in the data set that people get?

25 Anything else that identifies an individual

45 (Pages 174 to 177)

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1 voter?

2 **A. Which question am I answering?**

3 Q. Well, I'm going to say -- I'm going to tell you

4 we're not going to post any of that data

5 online. I'm telling you that right now.

6 Knowing that, does the secretary of state have

7 any reason to believe that if you produced this

8 data tomorrow, that Voter Reference Foundation

9 will go and post the data online anyway?

10 MS. LECOCQ: Objection.

11 **A. I think what I can respond to is that that is**

12 **the same kind of position that you had, right,**

13 **the same question you asked me about the**

14 **affidavit, and based on our analysis and**

15 **guidance from our attorney, our position has**

16 **not changed. So, again, it would require, you**

17 **know, guidance from our attorneys based on this**

18 **pending litigation if we received a new request**

19 **from you.**

20 BY MR. GREIM:

21 Q. Okay. Now I'm going to ask you: Does the

22 secretary of state believe that if you make a

23 response tomorrow to us, that we are going to

24 take the information of the voters, the

25 individual information for each voter, and put

Page 179

1 it online?

2 **A. I don't know.**

3 Q. So you think it's possible they'll do it

4 anyway?

5 **A. I think that it's an analysis that was taken**

6 **based on your position. I don't think your**

7 **position has changed. And we have received**

8 **guidance that it is in our best interest to**

9 **protect our position and so, therefore, we**

10 **didn't provide it.**

11 Q. I'm not asking --

12 **A. I don't think anything has changed, therefore**

13 **nothing would change in our response.**

14 Q. Okay. So even me telling you every category

15 that will not be put online, the position

16 remains that the secretary of state believes

17 that VRF may put it online anyway? You don't

18 know? You don't know? You think we might,

19 right?

20 **A. I think there's a concern.**

21 Q. Okay. Is there anything Voter Reference

22 Foundation can do to get rid of that concern?

23 Is there anything at all it can do?

24 MS. LECOCQ: Objection.

25 **A. Are you asking for my personal --**

Page 180

1 BY MR. GREIM:

2 Q. I'm asking for office's position.

3 **A. You know, I think that I don't have anything to**

4 **point to. I think it's all a matter of getting**

5 **to the end of this litigation so that we all**

6 **have clarity.**

7 Q. So the litigation will need to end before you

8 can answer that question?

9 **A. I don't know. Again, you know, nothing has**

10 **changed up to this point.**

11 Q. Okay.

12 **A. So until something were to change and we got**

13 **different guidance, I don't have a different**

14 **answer.**

15 Q. So it's kind of what the lawyers say?

16 **A. Yes.**

17 **(WHEREUPON, Deposition Exhibit 9 was**

18 **marked for identification.)**

19 BY MR. GREIM:

20 Q. Well, let's go to our next exhibit. I'm

21 handing you what we're marking as Exhibit 9.

22 You'll see this is a Dylan Lange letter. It's

23 actually an e-mail attaching a letter to Voter

24 Reference Foundation and it copies you. Do you

25 recognize this document?

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1 **A. Give me just a second. I recognize the**

2 **document.**

3 Q. Okay. Did you -- who was involved in drafting

4 this document?

5 **A. I know that I spoke to Dylan about it. Dylan**

6 **drafted the document, and I know that we**

7 **discussed it with Sharon.**

8 Q. So is it fair to say that Sharon and you both

9 approved this document before it went out the

10 door?

11 **A. Yes, and also, at the time, Olga.**

12 Q. And Olga, okay. You understood that she was

13 advising on behalf of the attorney general's

14 office, correct?

15 **A. Right.**

16 Q. Okay. So it looks to me like on October 18,

17 2022, Gina Swoboda, VRF, made a request for

18 about five categories of items. And then this

19 response was made on November 17th, about a

20 month later, right?

21 **A. Right.**

22 Q. Okay. And Ms. Swoboda, on behalf of VRF, made

23 this request under both the NVRA and the New

24 Mexico Public Records Law, right?

25 **A. Correct.**

46 (Pages 178 to 181)

Page 182

1 Q. So let's go to Mr. Lange's -- and by the way,  
 2 you agreed with everything in Mr. Lange's  
 3 response?  
 4 **A. I do.**  
 5 Q. Okay. I'm going to ask you now about these  
 6 items. So Mr. Lange says, "To begin with,  
 7 request number 3 is a request for future data  
 8 that does not/did not exist at the time of your  
 9 request, and we cannot fulfil requests in  
 10 perpetuity." That means can't ful- -- you  
 11 can't make a request for the future, way in the  
 12 future, and just keep expecting to be billed,  
 13 right?  
 14 **A. Uh-huh.**  
 15 Q. Okay. Is that what VRF did here?  
 16 **A. Yes.**  
 17 Q. Well, let's look at the request. So number 3,  
 18 is "Voter registration data for all voters  
 19 removed or canceled from any list between  
 20 September 24, 2022," right, "and December 15,  
 21 2022." And so part of that time is into the  
 22 future, right?  
 23 **A. Uh-huh.**  
 24 Q. But part of it already existed when the request  
 25 is made, right?

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1 **A. But the ask was for a window of time.**  
 2 Q. Sure. But is there any reason not to just to  
 3 give the data that you do have from  
 4 September 24th to the date of the response?  
 5 MS. LECOCQ: Objection.  
 6 **A. Our position and our process across the board**  
 7 **is to respond to requests, to respond to the**  
 8 **request that was made. And we could not**  
 9 **because that window of time didn't exist at**  
 10 **that time.**  
 11 BY MR. GREIM:  
 12 Q. Okay. So if somebody were to ask you -- let me  
 13 ask you this: What if the request was  
 14 through -- from September 24th of 2022 to  
 15 November 17, 2022, would you say we're going to  
 16 not respond to that request because on  
 17 October 18th it wasn't November yet?  
 18 MS. LECOCQ: Objection.  
 19 BY MR. GREIM:  
 20 Q. I mean, I'm just trying to understand the  
 21 principle here.  
 22 **A. The request was for future data that we did not**  
 23 **have. So if it was asking for future data, we**  
 24 **do not have it.**  
 25 Q. You reject the entire request then?

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1 **A. That is the request.**  
 2 Q. You do that for everybody?  
 3 **A. We respond to the request, yes.**  
 4 Q. You understand -- you don't -- you're not  
 5 arguing that VRF asked for data in perpetuity,  
 6 are you?  
 7 **A. I just said that I agreed with this statement**  
 8 **made by Dylan in this letter. So I do believe**  
 9 **it was asking future data.**  
 10 Q. Well, I'm not asking future. I'm asking in  
 11 perpetuity. VRF is not asking for data in  
 12 perpetuity, is it?  
 13 **A. I don't see that.**  
 14 Q. Okay. Let's now go to the second paragraph.  
 15 It says, "Additionally, we will refrain from  
 16 producing any responsive voter data maintained  
 17 by our office at this time due to numerous  
 18 issues further detailed below." It says that,  
 19 right?  
 20 **A. Yes.**  
 21 Q. And let's just march through those. He says,  
 22 "To begin with, this decision is motivated by  
 23 the fact that you will post any voter data  
 24 provided on your website, which our office  
 25 believes is a violation of law."

Page 185

1 Now, on what basis did the secretary of  
 2 state believe on November 17th that Voter  
 3 Reference Foundation was just going to post  
 4 whatever it got on its website?  
 5 **A. Because it had occurred.**  
 6 Q. Did you consider any statements that Voter  
 7 Reference Foundation or its counsel -- promises  
 8 that counsel made in open court afterwards,  
 9 were those considered?  
 10 **A. What is the date? Maybe we can clarify the**  
 11 **date. Was this letter before or after that**  
 12 **hearing?**  
 13 Q. This was in November, and this issue was  
 14 discussed -- you know, I hate to start making  
 15 representations without the transcripts here.  
 16 There were no hearings after November 17th,  
 17 I'll just tell you that.  
 18 So, I mean, my question is: On  
 19 November 17th it sounds like the only data  
 20 point for the secretary of state's office was  
 21 that at one time VRF had posted data on its  
 22 website.  
 23 **A. And I think I've spoken to that concern.**  
 24 **Because it had been posted online, that was a**  
 25 **concern to us.**

47 (Pages 182 to 185)



Page 186

1 Q. And any promises VRF made not to post on its  
2 website were not relevant, is that right?  
3 MS. LECOCQ: Objection.  
4 **A. Again, the decision was made on past practice.**  
5 BY MR. GREIM:  
6 Q. Okay. I understand that. My question is  
7 whether it's relevant when Voter Reference  
8 Foundation comes to you directly and says it  
9 will not post data online?  
10 **A. Clearly -- my understanding, just to make sure**  
11 **I have the timeline correct, this request came**  
12 **to us after the hearing in which you made those**  
13 **statements, correct?**  
14 Q. Yeah, it definitely did.  
15 **A. Okay. So our position, as outlined in this**  
16 **letter, was that based on past practice and**  
17 **concerns that it was going to be posted, we**  
18 **were not going to provide the data.**  
19 Q. And I'm just trying to understand what weight,  
20 if any, you gave to VRF's direct statements  
21 that it would not do so? Did you give that  
22 statement any weight?  
23 **A. I think we consider all things, right, but at**  
24 **the end of the day --**  
25 Q. Did you consider it?

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1 **A. -- we have obligation to protect what we**  
2 **believe is folks' privacy and to maintain their**  
3 **opportunity to participate in the process. So**  
4 **as I stated consistently, you know, at the**  
5 **hearing, again today, in our responses, our**  
6 **concern, based on past practice, was that this**  
7 **data was going to be posted online.**  
8 Q. So when --  
9 **A. And there was a decision not to provide the**  
10 **data.**  
11 Q. So when will VRF's past practice of posting the  
12 data stop counting against it when it makes  
13 data requests?  
14 MS. LECOCQ: Objection.  
15 **A. I don't even know how to answer that question.**  
16 BY MR. GREIM:  
17 Q. Okay. Did you consider the fact that VRF  
18 posted data after obtaining an injunction from  
19 the Court? Did that concern you as well?  
20 **A. Did I what, I'm sorry?**  
21 Q. You're saying you were considering past  
22 practices. Was one of the past practices that  
23 you considered the fact that VRF reposted the  
24 data after getting an injunction from the  
25 Court?

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1 MS. LECOCQ: Objection.  
2 **A. When was that? I'm just trying to get that in**  
3 **my mind at this point.**  
4 BY MR. GREIM:  
5 Q. July, the Court told us not to repost it.  
6 **A. 2022, and you reposted it, correct? And so**  
7 **then it was posted at the time of this request**  
8 **for more data.**  
9 Q. It was, yes.  
10 **A. So, yes. So after a promise not to post it, it**  
11 **was reposted, and then we get a request for**  
12 **more data, absolutely.**  
13 Q. Now, do you recall that the promise not to post  
14 it was unless or until we got relief from the  
15 Court? Do you recall that? We can go back and  
16 look at the letter. Let's go back.  
17 **A. That's fine. I get that you're going to do**  
18 **what the Court allows you to do.**  
19 Q. Right. But nonetheless, there was a dock  
20 against VRF when deciding whether to -- whether  
21 to --  
22 **A. I think that's a very clear indication of the**  
23 **intention of the use of the data.**  
24 Q. Okay. And so, now, how do you factor in the  
25 fact that after the Court of Appeals stayed the

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1 injunction VRF immediately took it down?  
2 **A. Because it's a court order, not out of respect**  
3 **for the state law or our position or our**  
4 **policy.**  
5 Q. Because we had to?  
6 **A. Yes.**  
7 Q. Okay, got it. But do you believe VRF will  
8 maybe even post it without a court order?  
9 **A. Post what without a court order?**  
10 Q. Voter data.  
11 **A. That if the Court says you cannot?**  
12 Q. Right.  
13 **A. If the Court says you cannot, no.**  
14 Q. Do you believe that while the issue is still  
15 pending, VRF might just decide to start posting  
16 again?  
17 **A. I think without a court order, I think their**  
18 **intention is to post that data, yes.**  
19 Q. Oh, so you believe VRF is going to -- you  
20 believe VRF will post voter data even without a  
21 court order?  
22 **A. I don't think I said that.**  
23 Q. Okay. I thought I -- I could have sworn you  
24 said that.  
25 **A. No.**

48 (Pages 186 to 189)



Page 190

1 Q. So even while this case is pending, do you  
2 believe VRF is going to repost data?  
3 A. I think without a court order that prohibits  
4 the posting of data, VRF has demonstrated that  
5 its intention is to post the data.  
6 Q. Okay. The next thing is, finally, on  
7 November 10, 2022 -- I'm back to Exhibit 9. On  
8 November 10, 2022, we filed a motion to stay --  
9 second paragraph. I'm kind of at the bottom of  
10 that second one. "We filed a motion to stay  
11 the preliminary injunction pending appeal...  
12 ...and do not think it is appropriate to  
13 produce voter data until the Court has ruled on  
14 the motion."  
15 Did I read that right?  
16 A. You did.  
17 Q. Okay. Why not?  
18 A. Why do we feel like it's not appropriate?  
19 Q. Yes.  
20 A. Because we feel like it's against the law.  
21 Q. Right. But -- so -- oh, so you -- is it the  
22 secretary of state's position that it is  
23 actually against the law to produce data to  
24 VRF?  
25 A. No.

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1 Q. Okay. So I'm asking you why the secretary of  
2 state says that "We do not think it is  
3 appropriate to produce voter data until the  
4 Court has ruled on the motion"?  
5 A. We appealed -- we were in the process of  
6 appealing because we felt like posting it  
7 online was against state law --  
8 Q. Okay. But --  
9 A. -- is against state law.  
10 Q. So what was inappropriate about just producing  
11 data to VRF at this time?  
12 A. The knowledge that it was going to be posted  
13 online.  
14 Q. Okay. Well, let's talk about this. Did the  
15 order allow VRF to post all data online or just  
16 some data?  
17 A. I don't know.  
18 MS. LECOCQ: Objection.  
19 BY MR. GREIM:  
20 Q. Okay. Well, we may have to actually pull it  
21 out. Did the secretary of state recall that  
22 the order only related to the data that VRF had  
23 already received?  
24 A. I'd have to look at the order.  
25 Q. I think we're going to have to pull the order

Page 192

1 up. While we're doing that, let me make sure I  
2 understand. The inappropriateness here in this  
3 sentence relates to another concern that  
4 without a definitive win in the Court of  
5 Appeals, VRF might start posting even new data  
6 on the Internet, is that right? Let me  
7 rephrase that.  
8 The inappropriateness you're referring to  
9 here is the secretary of state's concern that  
10 unless and until the secretary of state got a  
11 definitive win in the Tenth Circuit that VRF  
12 might just post any data it got online?  
13 MS. LECOCQ: Objection.  
14 BY MR. GREIM:  
15 Q. Is that the concern?  
16 A. The concern was that VRF had posted data. We  
17 understand that they had an intention to post  
18 data, and they're asking for updated data, so,  
19 yes, there is a concern that it would be  
20 posted.  
21 Q. Okay. I'm just going to read to you -- you're  
22 not in a good position for me to tilt the  
23 computer around. I'm looking at DOC 51,  
24 page 210. And it says, "It is ordered that (i)  
25 the Plaintiffs' motion for preliminary

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1 injunction is granted in part; (ii) that AG  
2 Balderas and Defendant SOS Oliver are enjoined  
3 from prosecuting Plaintiff VRF for publish-" --  
4 okay, this is all one thing -- "are enjoined  
5 from prosecuting Plaintiff Voter Reference  
6 Foundation under N.M.S.A. 1-4-5.5 or 1-4-5.6  
7 for publishing data it already received from  
8 Local Labs."  
9 Okay. So does that refresh your  
10 recollection that the order only went to the  
11 data we already received?  
12 MS. LECOCQ: Objection.  
13 A. I mean, I heard you. Now I know what it says.  
14 BY MR. GREIM:  
15 Q. Okay. So is it possible that the secretary of  
16 state -- I mean, you're here not as yourself  
17 but for the secretary of state, did not know  
18 that the injunction only related to the data  
19 that VRF had received from Local Labs?  
20 MS. SCHREMMER: Objection.  
21 A. It's possible. But I guess also, you know,  
22 when I hear that statement all along, right,  
23 there's 200 and something other pages to  
24 consider in that order, so I am going to,  
25 obviously, rely on an attorney to read that in

49 (Pages 190 to 193)

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1 its entirety. So it already received, does  
 2 that mean the fields? Does that mean only from  
 3 a certain date and time? I don't think that's  
 4 clear.  
 5 BY MR. GREIM:  
 6 Q. Okay. So the secretary of state thought that  
 7 the injunction was unclear?  
 8 MS. SCHREMMER: Objection.  
 9 **A. I think that statement you just read that**  
 10 **you're asking me respond to is unclear, as I**  
 11 **think there is a much larger document that was**  
 12 **reviewed and considered by our legal counsel.**  
 13 BY MR. GREIM:  
 14 Q. Okay. Well, let me just ask you. I want to  
 15 make sure I fully understand the meaning of  
 16 this last phrase about "do not think it's  
 17 appropriate to produce voter data." Is there  
 18 any other concern about appropriateness there  
 19 other than the fear that VRF was going to take  
 20 the new data and post that online?  
 21 **A. It was the belief, based on past practice, that**  
 22 **it was going to post the new data online, and**  
 23 **also the fact that we were appealing that**  
 24 **decision that provided opportunity to post.**  
 25 Q. So why would the appeal make a difference? I'm

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1 trying to understand why would the fact of the  
 2 appeal keep VRF from being able to get data?  
 3 MS. LECOCQ: Objection.  
 4 BY MR. GREIM:  
 5 Q. Why did the secretary of state think that the  
 6 appeal mattered?  
 7 **A. It mattered because we believed that posting it**  
 8 **online is contrary to what the law allows.**  
 9 Q. But was the secretary of state going to get a  
 10 decision from the Tenth Circuit that VRF can  
 11 never post the data online? Was that even a  
 12 possibility on the appeal?  
 13 **A. We believe that is a possibility.**  
 14 Q. Okay.  
 15 **A. We believe that we are following the law.**  
 16 Q. Okay.  
 17 **A. That's it.**  
 18 Q. Okay. So the secretary of state -- I'm just --  
 19 believes that it might win in the Tenth  
 20 Circuit, and the Tenth Circuit might say, "VRF,  
 21 you can't post this online at all," and you  
 22 thought you needed to wait to see what the  
 23 Tenth Circuit said, is that right?  
 24 **A. In part, and the past practice of reposting**  
 25 **online, yes.**

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1 Q. Okay. And so, I mean, the Tenth Circuit  
 2 decision isn't decided now either, right?  
 3 Still waiting?  
 4 **A. We are still waiting.**  
 5 Q. Okay. Well, actually, let's be clear. What  
 6 you cite here is the motion to stay the  
 7 preliminary injunction --  
 8 **A. Correct.**  
 9 Q. -- right? Well, that was granted.  
 10 **A. Yes.**  
 11 Q. So does that change this sentence? Would you  
 12 now produce the data because the motion to stay  
 13 was granted, or would you be less inclined to  
 14 produce the data because the motion to stay was  
 15 granted?  
 16 **A. I think as I stated before, you know, there**  
 17 **hasn't been a significant change in the facts,**  
 18 **right, so there's not a change in your**  
 19 **position, not a change in our position, no.**  
 20 Q. Well -- okay. But the letter cites the motion  
 21 to stay, as a fact that it's pending, as a  
 22 reason not to produce the data, and so the  
 23 motion to stay has been decided, it has been  
 24 granted. And so now that something -- that has  
 25 changed, the thing cited here has changed. And

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1 so my question is which way does that cut?  
 2 Does it make it -- is the secretary of state  
 3 more inclined to release the data after having  
 4 won the motion to stay or less inclined  
 5 to release the data?  
 6 **A. I don't have an updated response from the**  
 7 **office on that item.**  
 8 Q. Okay. I'm going to be adding that to the list  
 9 of things that we don't have an answer to and  
 10 this may require counsel being involved. I'd  
 11 like to understand that. We need to understand  
 12 what this letter means.  
 13 Okay. The next -- we can keep moving  
 14 through. The next paragraph says that you have  
 15 not submitted the required affidavit and it  
 16 cites -- oh, here, it actually cites the  
 17 injunction, so it cites part of the injunction.  
 18 So is the lack of an affidavit one of the  
 19 reasons for rejecting the request?  
 20 **A. Absolutely.**  
 21 Q. Even had there been an affidavit attached, it  
 22 still would have been rejected, though,  
 23 correct?  
 24 **A. I think we don't know that answer because we**  
 25 **didn't receive one, right?**

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1 Q. No -- well --  
 2 **A. But based on what we do know at this -- are we**  
 3 **asking about this point in time?**  
 4 Q. Yes.  
 5 **A. Yes.**  
 6 Q. Okay. It would have been rejected even with  
 7 the affidavit?  
 8 **A. Yes.**  
 9 Q. Okay. And then finally at the very end you say  
 10 that if the Court orders you to produce it, you  
 11 will, right?  
 12 **A. Right.**  
 13 Q. That remains true?  
 14 **A. Correct.**  
 15 **(WHEREUPON, at this time a discussion was**  
 16 **held off the record.)**  
 17 BY MR. GREIM:  
 18 Q. I have one more question about Exhibit 9 -- a  
 19 different part -- I'm sorry, this is Exhibit 8.  
 20 Let's go back here. Exhibit 8 does double  
 21 duty. It is a request for -- it attaches a  
 22 request for records and it also provides a  
 23 notice of violation. Do you see the bolded  
 24 section in the beginning? There's some  
 25 indentation problems there, but it says "Notice

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1 So your counsel may have an objection  
 2 that I can't ask this question or that you  
 3 don't need to give me an answer, but I'm just  
 4 going to ask it on the record. Does the  
 5 secretary of state contend that there is  
 6 anything defective in this notice of violation  
 7 of the NVRA?  
 8 MS. LECOCQ: Objection. You can answer.  
 9 **A. I don't know.**  
 10 MR. GREIM: Now we can take our break.  
 11 (WHEREUPON, at this time a brief recess  
 12 was taken.)  
 13 BY MR. GREIM:  
 14 Q. All right. Before we leave our last topic, the  
 15 denials of records, we talked, Ms. Vigil, about  
 16 the reasons for the secretary of state denying  
 17 the requests that I made in May and then we  
 18 talked again about the denials of the November  
 19 requests. I just want to make sure we're not  
 20 missing any of the reasons for the denials of  
 21 the requests.  
 22 **A. I mean, it was made in October, right?**  
 23 Q. Yeah, made in October, that's right. And so  
 24 maybe if we can go back to Exhibit 8, we talked  
 25 about the statements regarding personal

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1 of Violation of National Voter Registration Act  
 2 and Request for Records," do you see that?  
 3 **A. I do.**  
 4 Q. Okay. Now, one thing we're asking for the  
 5 secretary of state's position on in this case  
 6 is whether there was any information missing  
 7 from this notice. Is there anything in here  
 8 that it is claiming should have been inserted  
 9 into this notice to make it a proper notice?  
 10 And my question is: Is there anything missing  
 11 in the notice?  
 12 **A. A proper notice of NVRA violation?**  
 13 Q. Uh-huh.  
 14 **A. I don't know what's required of the notice of**  
 15 **an NVRA violation.**  
 16 Q. Did you do anything before the deposition today  
 17 to explore that topic?  
 18 **A. Compliance with federal law from your**  
 19 **organization?**  
 20 Q. No, no. Let's -- I mean, I can -- we can go  
 21 back to the -- we can go back to the notice.  
 22 Let's see here. Oh, it's the admissions and  
 23 denials and responses to discovery. Okay.  
 24 Well, we asked you a question about whether  
 25 this notice was proper.

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1 information, not publishing it online, and --  
 2 but I skipped over, kind of, the second of the  
 3 two projects. And so I list in this request  
 4 two different projects that we were going to do  
 5 with the data. And you'll see the first one is  
 6 this complete list by county precinct -- I'm  
 7 sorry. These are two sets of data. And the  
 8 second one is the current voter registration  
 9 data.  
 10 And then I go in and mention the two  
 11 projects. At the very bottom I say for a  
 12 second project VRF intends to analyze basically  
 13 the data or to engage in a discrepancy review  
 14 of the voter rolls. Do you remember reading  
 15 over that earlier?  
 16 **A. Yes.**  
 17 Q. And I just wanted to know, earlier I think you  
 18 testified that some of the misinformation that  
 19 the secretary thinks that VRF was engaging in  
 20 was that discrepancy analysis and its  
 21 statements about that, which would have been  
 22 back in late 2021. And so before I ask a  
 23 question, I just want to make sure that you're  
 24 tracking with me. Do you recall testifying  
 25 earlier about the secretary's concern that the

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<p style="text-align: right;">Page 222</p> <p>1        <b>don't believe the AG's office has shared any</b></p> <p>2        <b>feedback on the amendment.</b></p> <p>3        BY MR. GREIM:</p> <p>4        Q. Okay. But back to the question that I asked,</p> <p>5        which is not about the response to this, my</p> <p>6        question is whether the secretary of state's</p> <p>7        office, okay, your office, is supporting these</p> <p>8        particular amendments in order to impact the</p> <p>9        current litigation?</p> <p>10       MS. LECOCQ: Objection.</p> <p>11       <b>A. No.</b></p> <p>12       MR. GREIM: We're all set. We're done</p> <p>13       here.</p> <p>14       THE COURT REPORTER: Erin, would you like</p> <p>15       a copy?</p> <p>16       MS. LECOCQ: Yes.</p> <p>17       MR. GREIM: We are asking for a rough by</p> <p>18       Thursday, and they may also want the same.</p> <p>19       MS. LECOCQ: Yeah, we would like that,</p> <p>20       too.</p> <p>21</p> <p>22       (Deposition concluded at 6:53 p.m. EST.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 224</p> <p>1       STATE OF INDIANA    )</p> <p>2                                  ) SS:</p> <p>3       COUNTY OF JOHNSON    )</p> <p>4</p> <p>5       CERTIFICATE</p> <p>6</p> <p>7       I, Valerie Fillenwarth, RPR, a Notary</p> <p>8       Public in and for the County of Johnson, State</p> <p>9       of Indiana, maintaining an office in Johnson</p> <p>10       County, Indiana, do hereby certify the</p> <p>11       following:</p> <p>12</p> <p>13       That the witness herein, MANDY VIGIL, was</p> <p>14       first duly sworn to tell the truth, the whole</p> <p>15       truth and nothing but the truth in the</p> <p>16       foregoing deposition;</p> <p>17</p> <p>18       That all testimony was taken down in</p> <p>19       stenographic notes and afterward reduced to</p> <p>20       typewritten form under my direction and then</p> <p>21       presented to counsel for the purpose of</p> <p>22       obtaining the deponent's signature;</p> <p>23</p> <p>24       That I recorded and transcribed any and</p> <p>25       all objections made by counsel and the reasons</p>
<p style="text-align: right;">Page 223</p> <p>1       ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3       I, MANDY VIGIL, do</p> <p>4       hereby certify that I have read the</p> <p>5       foregoing pages, and that the same is</p> <p>6       a correct transcription of the answers</p> <p>7       given by me to the questions therein</p> <p>8       propounded, except for the corrections or</p> <p>9       changes in form or substance, if any,</p> <p>10       noted in the attached Errata Sheet.</p> <p>11</p> <p>12</p> <p>13       _____</p> <p>14       MANDY VIGIL                      DATE</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 225</p> <p>1       therefore; and</p> <p>2</p> <p>3       That I am not a relative or employee,</p> <p>4       attorney or counsel of any of the parties, nor</p> <p>5       a relative or employee of such attorney or</p> <p>6       counsel, nor am I financially interested in</p> <p>7       this action.</p> <p>8</p> <p>9       IN WITNESS HEREOF, I have hereunto set my</p> <p>10       hand and affixed my Notarial Seal this 16th day</p> <p>11       of March 2023.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16       Valerie Fillenwarth, RPR</p> <p>17       Notary Public</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23       My County of Residence is: Johnson</p> <p>24       Commission Number: NP0669434</p> <p>25       My Commission Expires: June 22, 2023</p>

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<b>Hugh Alexander Curtas</b> February 28, 2023 <b>Plaintiff's Designations</b>	
<b>Beginning</b>	<b>Ending</b>
4:18	4:22
52:7	53:9
53:6	53:9
72:17	72:22
72:23	73:12

<b>Hugh Alexander Curtas</b> February 28, 2023 <b>Defendants' Designations</b>	
<b>Beginning</b>	<b>Ending</b>
53:10	54:10
55:1	55:10
71:24	72:16
74:08	75:10
83:4	85:11
89:23	90:11
94:24	95:11
113:4	113:18
116:8	117:11



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Hugh Alexander Curtas

February 28, 2023

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Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.



1 THE REPORTER: All parties to this deposition  
2 are appearing remotely and have agreed to the  
3 witness being sworn in remotely.

4 Due to the nature of remote reporting,  
5 please pause briefly before speaking to ensure all  
6 parties are heard completely.

7 Counsel will be noted on the  
8 stenographic record.

9 Mr. Curtas, would you raise your right  
10 hand, please, sir.

11 (WHEREUPON, the witness was duly  
12 sworn.)

13 HUGH ALEXANDER CURTAS,  
14 called as a witness herein, having been first duly  
15 sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MR. TYLER:

18 Q. Mr. Curtas, thanks for coming. Can you  
19 just again give your full name.

20 A. Sure. Full name, Hugh Alexander Curtas.  
21 I'm the communications director for the Secretary  
22 of State's office.

23 Q. So, it is Curtas, not Curtas  
24 (pronunciation)?

25 A. Yes.

1           Q.     Okay.  So, you say, "Simply put,  
2     VoteRef.com is misleading the public about New  
3     Mexico's voter rolls and are perpetuating  
4     misinformation."

5                     I have got a couple terms just in that  
6     sentence that I would like to define quickly.

7                     When you say "misinformation," what do  
8     you mean?

9           A.     I mean misinformation about voting and  
10    elections that was very prominent at the time and  
11    continues to be very prominent.

12          Q.     So, misinformation, though, what do  
13    you -- what is misinformation to you?

14          A.     So, misinformation in -- are you talking  
15    in general or specific what I'm specifically  
16    referring to here?

17          Q.     If there is a general definition that  
18    you have and then a different specific definition  
19    in this context, then I would like to know both of  
20    those.  But if there is just one, I'd like to know  
21    that one.

22          A.     I think in this context, they are the  
23    same.  And what I mean by misinformation and  
24    election and voting misinformation at this -- here,  
25    is putting out information about our voting and

1 elections that doesn't correspond to the truth.

2 Q. And in this context, you're saying that  
3 VRF is perpetuating misinformation. What is the  
4 information that VRF was putting forth that did not  
5 correspond to the truth?

6 A. Sure. So, the misinformation that  
7 Voter Ref is -- you know, that I'm claiming here,  
8 is that there are discrepancies within our voter  
9 data.

10 Q. And how did you come to that conclusion?

11 A. That conclusion is basically the first  
12 bullet point of my answer in this e-mail, namely,  
13 that this organization is claiming that our voter  
14 data is not accurate and they are mis- -- I mean,  
15 they are, they being Voter Ref, are  
16 mischaracterizing the data they seem to be in  
17 possession of.

18 Q. What is the characterization by  
19 Voter Ref that you are saying is misinformation?

20 A. That there are differences between the  
21 voter -- like the voter data and number of ballots  
22 cast or, you know, what they are alleging in here,  
23 in there or what I have been told from this  
24 reporter at this point is incorrect.

25 A discrepancy -- well, what I came to

1 learn was that the data they are referencing here,  
2 Voter Ref, via Megan O'Matz and into my e-mail, is  
3 from a voter file that was pulled months before  
4 this. And what I learned is that then immediately  
5 once anyone pulls a voter file, it's out of date  
6 immediately because the voter data is being  
7 constantly updated.

8 And, so, to claim a discrepancy in our  
9 voter data when there is not one, to me, is  
10 misinformation.

11 Q. And was that the -- let me rephrase.

12 You said to you that's misinformation.

13 Did you talk to anybody else in the office about it  
14 being misinformation?

15 A. That I couldn't recall. I couldn't  
16 recall that. What I talked to other people in the  
17 office was about the facts that I needed to respond  
18 to this reporter.

19 Q. Okay. Let's move to the next sentence  
20 in that first paragraph.

21 "They reflect a lack of understanding  
22 about how the process of voter list maintenance  
23 works."

24 Did I read that correctly?

25 A. Yes.

1 Q. Okay. You kind of touched on this I  
2 think. But what is the lack of understanding that  
3 you were referring to?

4 A. Yeah, the lack of understanding I'm  
5 referring to there is the -- the fact that if you  
6 reference -- if you pull a voter data file and then  
7 you want to compare that voter data file with  
8 current voter data, that -- and claim a  
9 discrepancy, you're misunderstanding the data. And  
10 that's what I'm referencing there.

11 Q. What would you suggest to someone,  
12 either an organization like VRF or just a  
13 New Mexico citizen, if they had a similar lack of  
14 understanding?

15 MS. LECOCQ: Objection.

16 BY MR. TYLER:

17 Q. What would you suggest to them to do?

18 A. I would suggest that they learn just how  
19 the process works, you know, just learn the  
20 back-end process of how data is maintained and used  
21 and what it means to pull the voter file and why as  
22 soon as you pull it it's out of date.

23 Just that kind of thing right there,  
24 most people wouldn't understand. "What do you mean  
25 it's out of date? Why?" You kind of have to

1           **A.       These are my words drafted from what**  
2       **they told me.**

3           Q.       Okay. In the course of either, you  
4       know, when you got the first e-mail from Megan  
5       O'Matz or at any point after that, have you created  
6       any like file on VRF or anything like that that you  
7       would have, research documents and/or drafts of  
8       things?

9           MS. LECOCQ: Objection.

10       BY THE WITNESS:

11           **A.       No, no. Other than, you know, the**  
12       **e-mails that -- these e-mails and things that I**  
13       **have produced for discovery, yeah, that's -- that's**  
14       **the only information I would have referencing VRF.**

15       BY MR. TYLER:

16           Q.       Okay. And moving on to the second  
17       bullet point, you say, "No, our Office has not been  
18       contacted by this group to discuss their findings  
19       likely because that would not serve their intended  
20       goal of spreading misinformation."

21                    I think we've hit that first clause a  
22       good amount.

23           **A.       Um-hmm.**

24           Q.       The second one, where did you come to  
25       this conclusion or how did you come to this



1 conclusion that the intended goal of VRF is to  
2 spread misinformation?

3 A. So, I would have -- I came to that  
4 conclusion because of the information that I had at  
5 that point and -- which cannot also -- which must  
6 be seen in the larger context of what's going on in  
7 December of 2021 and to now, which is an immense  
8 amount of mis- and disinformation about voting and  
9 elections being, you know, in the public  
10 conversation.

11 So, that's to say me specifically,  
12 because I'm kind of the front line on this, but our  
13 office more generally, very -- we are very attuned  
14 to the misinformation that's out there about  
15 elections in general and New Mexico's elections  
16 specifically.

17 And, so, I as the spokesperson for the  
18 office am pushing back hard wherever I find it,  
19 wherever I see it, and because we want New Mexicans  
20 to have accurate information about their voting and  
21 elections. It's part of our mission at the office.  
22 And, so, I'm very attuned to that.

23 Once I kind of looked at all of this,  
24 namely, that this group is in illegal possession of  
25 our voter data and not only are they in illegal

1 possession of our voter data, they are making  
2 claims, false claims, about the data that they  
3 have, and those two things are really concerning to  
4 me and led me to the conclusion -- especially  
5 because there is a larger kind of strategy of  
6 election denialism that focuses on voter list  
7 maintenance specifically.

8 So, it's not like this is happening in a  
9 vacuum. There is a reason that when I'm looking at  
10 all of this information that I have at this point,  
11 I am, you know -- I'm of the opinion that this  
12 is -- that this is their intention.

13 Q. Are there other people in the  
14 Secretary's office that share your feelings about  
15 this?

16 A. I wouldn't be able to talk about -- I  
17 mean, specifically to whatever individuals are  
18 thinking about this and, you know, about this group  
19 and in this time. So, I mean, you know, this is --  
20 yeah, I mean, I don't know exactly what someone  
21 like Sharon or Mandy or whatever, you know, would  
22 think about this group at this time.

23 Q. Have you ever talked to anyone in the  
24 office about the kind of -- what you're referencing  
25 as the greater kind of misinformation around

1 elections?

2           A.       Certainly, yes. We talk about that all  
3 the time. It's been a major, you know, a major  
4 project of our office to push back against election  
5 misinformation since 2020. Actually, before 2020.  
6 But a major project of the office. So, definitely  
7 something that is discussed.

8           Q.       Is it fair to say -- so, you said that  
9 you were pushing back hard. Is it fair to say you  
10 were pushing back hard because you were associating  
11 VRF with these other organizations or other people  
12 who were in your mind associated with election  
13 denial or anything like that?

14           MS. LECOCQ: Objection.

15           BY MR. TYLER:

16           Q.       Misinformation.

17           A.       Really, the reason I'm pushing back hard  
18 in this instance is really at this point I have not  
19 that much information about the Voter Reference  
20 Foundation. The information I have is basically  
21 coming from this reporter.

22                   I mean, a little bit of that Google  
23 search, but really it's coming from this reporter  
24 and what I can glean from them being in possession  
25 of voter data and then making claims that we

1 consider to be false about that voter data.

2 So, I mean, that's what's informing my  
3 claim there that they're attempting to spread this  
4 misinformation. I mean, and the larger context in  
5 which this is playing out.

6 But I don't -- at this point I don't  
7 know enough specifics about these people or  
8 anything to say -- to say anything other than on  
9 its face it looks like they're spreading  
10 misinformation about our voter data.

11 Q. Could you just discuss the views that  
12 you have personal knowledge of of the other people  
13 in the Secretary's office about misinformation  
14 regarding elections or voter rolls or voter  
15 maintenance?

16 MS. LECOCQ: Objection.

17 BY THE WITNESS:

18 A. Well, I mean, again, going back, you  
19 know, without being able to know exactly what, you  
20 know, any one person's thinking, I think that we  
21 are aligned, the leadership team in our office is  
22 aligned in wanting to get New Mexicans the best  
23 information they can and pushing back against what  
24 we see as a real problem with the narrative around  
25 elections, which is misinformation.

1                   So, what you describe there is what my,  
2   you know -- is the -- what I was operated -- the  
3   knowledge that I was operating off of.

4           Q.    I guess I'm just trying to pinpoint what  
5   you're believing and what the office is believing  
6   is the misinformation.

7           A.    Sure. Well, the misinformation.  
8   They're claiming almost 4,000 people voted in  
9   New Mexico that didn't vote. That's a -- that's a  
10   big bit of misinformation right there because  
11   that's just not true.

12                   They have no proof of that. There had  
13   never been any proof of that. What they are  
14   referencing in terms of this data does not prove  
15   that.

16                   And, yeah, so that's kind of what I'm --  
17   that's what I'm getting at there is that, you know,  
18   they are looking at this, at this data, and they're  
19   saying something that's not true about it. And in  
20   my mind that undermines voter confidence. I  
21   understand, you know, their claim is that they are  
22   trying to -- voter confidence as well.

23                   But in my, you know, work and all of  
24   this, these kinds of things, especially coming --  
25   this is, again, in the context of 2020 and we're --

1 we've already gotten through the 2020 election,  
2 January 6, all of that. We are coming up on to  
3 this very important midterm election. We want to  
4 make sure that people have the correct data.

5 And what I don't want out there as a  
6 communications person is a false story that our --  
7 that 4,000 more people, that there is some kind of  
8 discrepancy between, you know, who is on the rolls  
9 and who is going to be able to vote. And, so,  
10 that's why I am really trying to be -- like push  
11 back hard on this.

12 Q. Okay. And I promised you that I was  
13 going to pick up the pace a little bit, and I  
14 promise that I will, but I have one last question  
15 for you.

16 You've said that if someone had a  
17 question or an inquiry like VRF, they should  
18 contact you.

19 After you learned that VRF did contact  
20 the Secretary of State, did you ever contact VRF?

21 MS. LECOCQ: Objection.

22 BY THE WITNESS:

23 A. I did not contact VRF, but I can't say  
24 with any certainty whether other -- somebody in my  
25 office may have done that.



1 BY MR. TYLER:

2 Q. Did anybody come and talk to you about  
3 contacting VRF?

4 A. **Not that I recall. Not that I recall.**

5 Q. Did anybody talk about not contacting  
6 VRF?

7 MS. LECOCQ: Objection.

8 BY THE WITNESS:

9 A. **Yeah, not that I recall.**

10 BY MR. TYLER:

11 Q. Okay. I would like to go to page 4, 4  
12 and 5. And, again, the -- a little wonky here.  
13 The bottom of page 4 is the first part of the  
14 e-mail from the top of page 5.

15 A. **Okay.**

16 Q. And here -- will you just take a second  
17 and read that e-mail to yourself.

18 A. **Sure.**

19 Q. Sorry. Just to clarify right now. I'm  
20 just talking about the December 16 e-mail at 11:44.

21 A. **Okay. Gotcha. So, just this one right**  
22 **here.**

23 Q. Yes.

24 A. **Yes, I have read that.**

25 Q. In that e-mail she is talking to you

1           **A.       Thank you for numbering these.**

2           Q.       So, this is after some just  
3 back-and-forth. She thanks you for looking into  
4 the issue.

5           **A.       We're going up in time here.**

6           Q.       Yes, yes. It's kind of reverse  
7 chronological order here.

8           **A.       I got you.**

9           Q.       And you say, "On the legal issue: Our  
10 office believes publication of voter data by  
11 VoteRef.com is in direct violation of New Mexico  
12 Election Code. We do not believe that posting New  
13 Mexicans' private voting information online is  
14 legal use of this information. We will refer the  
15 use of this information by VoteRef.com to the  
16 New Mexico Attorney General for criminal  
17 investigation and prosecution."

18                   And where did you get this information?

19           MS. LECOCQ: Objection.

20           BY MR. TYLER:

21           Q.       We can go -- let's just go piece by  
22 piece here, make it a little bit more clear.

23                   You say, "Our office believes this  
24 publication of voter data by VoteRef.com is in  
25 direct violation of New Mexico Election Code."

1 Where did that conclusion come from?

2 A. So -- well, I mean, it comes from the  
3 experts in our office. So, in this specific thing,  
4 you know, as -- to compare to that e-mail where I'm  
5 doing some editorializing on my own, when it comes  
6 to legal issues, I get verbatim words from Dylan  
7 and this was a copy-paste. This is how I respond  
8 to the reporter in this claim.

9 And I -- you know, because -- I mean,  
10 Dylan is our general counsel, so, this -- he gave  
11 us this.

12 MS. LECOCQ: I'm going to just register an  
13 objection. I don't want to waive any  
14 attorney-client privilege. I understand what it is  
15 that you're trying to do here, so I don't want to  
16 get in the way of that. But I just want to put on  
17 the record we are not waiving the attorney-client  
18 privilege.

19 MR. TYLER: Sure. And I will just ask what's  
20 in this e-mail.

21 BY MR. TYLER:

22 Q. So, you said that this was verbatim and  
23 you shared this with Megan O'Matz. Was that from  
24 an e-mail? Did you copy-and-paste it in?

25 A. It was -- again, I couldn't say

1           **A.       No, it's not that formal.**

2       BY MR. TYLER:

3           Q.       Okay.

4           **A.       Yeah.**

5           Q.       Okay. And, so, I think you've answered  
6       this a little bit, but the bit that's in quotes  
7       here from "We do not believe" through the end of  
8       that paragraph, what is that quoted from?

9           **A.       If my recollection is correct, that is a**  
10       **direct copy-paste from the AG referral letter that**  
11       **we're referencing here.**

12          Q.       And what do you mean when you say "This  
13       is the crux"? What do you mean?

14          **A.       I just mean, you know -- she's asking me**  
15       **that specific question, Megan O'Matz is asking me**  
16       **that specific question.**

17                   In that last e-mail, you know, I gave  
18       her the entire AG referral letter, so she has the  
19       entire thing for context. But just as kind of a  
20       quick summary, this is, you know, just so you know,  
21       this is the main point, the thesis statement of  
22       this, you know, of the referral letter that I've  
23       attached.

24          Q.       Who told you that that was the crux or  
25       that that was the summary part?

1 MS. LECOCQ: Objection.

2 BY THE WITNESS:

3 A. No one specifically. That would have  
4 been my -- my, you know, conclusion after reading  
5 that. The referral letter, that was the most  
6 important. Like I said, that's the thesis  
7 statement of the letter. So, that's why I wanted  
8 her to have that in that e-mail.

9 If she didn't look at -- you know, if  
10 she never wanted to look at that letter, she could  
11 still get the idea from that sentence.

12 BY MR. TYLER:

13 Q. Now that this has kind of turned into,  
14 through these e-mails, this has kind of turned into  
15 a legal issue and maybe a bigger issue than you  
16 maybe thought it was in the first place -- I don't  
17 know -- are you running these e-mails by anybody at  
18 this point?

19 MS. LECOCQ: Objection.

20 BY THE WITNESS:

21 A. No, no. No, I have the leeway, you  
22 know, and authority in the office to correspond  
23 with a reporter in this way.

24 BY MR. TYLER:

25 Q. Okay. Did anybody in the office ever

1           **A.       The most prevalent --**

2           Q.       Most prevalent.   Okay.

3           **A.       -- I would say, yes.**

4           Q.       So, why is VRF on this page?

5           **A.       Sure.   So, VRF is on this specific**  
6 **page because more -- speaking more to that timely**  
7 **aspect is that after these articles came out, we**  
8 **were concerned -- we wanted people to know exactly**  
9 **what was happening with -- with the publication of**  
10 **the voter data.   So, that's why Voter Reference is**  
11 **mentioned on here.**

12          Q.       So, you just wanted people to know about  
13 Voter Reference?

14          **A.       No.   We wanted to -- we wanted people to**  
15 **know about what was going on with the data -- with**  
16 **the New Mexicans voter data and -- and because it**  
17 **has to do with Voter Reference Foundation, we had**  
18 **to reference them and talk about that as well.**

19          Q.       Okay.   And if we go down to where it  
20 talks specifically about Voter Reference  
21 Foundation, I believe it says -- I believe it's the  
22 first one.

23          MS. LECOCQ:   I'm so sorry, Counsel, where are  
24 you?

25          MS. SCHREMMER:   What page are you on?



1           A.       And I am in charge of developing this  
2   page.

3           Q.       So, if we can go down to what I believe  
4   is still on page 1, talking about Voter Reference  
5   Foundation, "What you need to know." You wrote all  
6   of this, correct?

7           A.       I did.

8           Q.       Okay. And what is your goal in putting  
9   this on this specific web page?

10          A.       So, the goal when putting this content  
11   on this web page is -- and, again, we're talking  
12   just about the Voter Reference portion of this  
13   page?

14          Q.       Yes.

15          A.       Is to make sure that the public has a  
16   resource for more information now that there have  
17   been published news articles about these topics.

18                   We wanted to make sure that people  
19   understood, you know, basically the questions that  
20   I have in here, how much of my information is  
21   online, can I cancel my voter registration and get  
22   my information taken off.

23                   And probably what was the most important  
24   or one of the most important things we were  
25   thinking about at this point is our confidential

1 address program, which is a very important program  
2 for our office, shields survivors of domestic abuse  
3 and stalking from having their information out  
4 there.

5 Of course, publishing voter information,  
6 you know, could have potential implications for  
7 those people. So, we wanted to make sure -- that's  
8 why, you know, a third of this post, of that  
9 section of the post is taken up by the Safe at Home  
10 program and really just wanted people to know, hey,  
11 this is happening.

12 Q. Okay. And, so, you mentioned it there  
13 at the end, but just to clarify the program that  
14 you were referring to is the Safe at Home program?

15 A. Yes. Yes.

16 Q. There are various things that are in  
17 blue here and --

18 A. You mean the URLs?

19 Q. Yes.

20 A. Yes.

21 Q. I do. From being the person that wrote  
22 this portion, these are links?

23 A. They are links, yes, sir.

24 Q. Do you know where these links go?

25 MS. LECOCQ: Objection.

1 I, CORINNE T. MARUT, C.S.R. No. 84-1968,  
2 Registered Professional Reporter and Certified  
3 Shorthand Reporter, do hereby certify:

4 That previous to the commencement of the  
5 examination of the witness, the witness was duly  
6 sworn to testify the whole truth concerning the  
7 matters herein;

8 That the foregoing deposition transcript  
9 was reported stenographically by me, was thereafter  
10 reduced to typewriting under my personal direction  
11 and constitutes a true record of the testimony  
12 given and the proceedings had;

13 That the said deposition was taken  
14 before me at the time and place specified;

15 That the reading and signing by the  
16 witness of the deposition transcript was waived;

17 That I am not a relative or employee or  
18 attorney or counsel, nor a relative or employee of  
19 such attorney or counsel for any of the parties  
20 hereto, nor interested directly or indirectly in  
21 the outcome of this action.

22

23 Corinne T. Marut  
CORINNE T. MARUT, Certified Reporter  
24 Registered Professional Reporter  
License No. 84-1968

25

Joseph Dworak March 13, 2023 Plaintiff's Designations		Defendants' Objection	Plaintiff's Response
Beginning	Ending		
6:8	6:14		
7:12	11:6	<p>9:18-11:6; Relevance:</p> <p>The Open Government division does not provide counsel to the Secretary of State's office. Your proposed use of this testimony for that purpose would be entirely misleading.</p>	<p>This testimony shows (1) the basis of Mr. Dworak's knowledge of record requests and the function of the Open Records division; (2) the function of the Open Records division; and (3) how the Attorney General's office advises various public bodies-like the Secretary of State's Office. The connection between the Attorney General's Office and the Secretary of State's office is relevant to VRF's claim that the two worked in concert to refuse to fulfill VRF's requests for voter data and to chill VRF's speech. <i>Kennicott v. Sandia Corp.</i>, 327 F.R.D. 454, 469 (D.N.M. 2018) ("Relevance is still to be construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on any party's claim or defense.")</p>
16:21	17:4		
19:25	20:12	<p>Relevance; calls for legal conclusion:</p> <p>The testimony recites the statutory language and offers nothing of evidentiary value. Our office does not have a unified position on statutory provisions; attorneys from different division are frequently called upon to litigate against one another and take conflicting positions on these topics.</p> <p>If it was Plaintiff's intention to have the judge on standby</p>	<p>The question calls for the Attorney General's position on lawful uses of New Mexico voter data under § 1-4-5.5 which is relevant to show the Attorney General and Secretary of State's basis to deny VRF access to New Mexico voter data-a key issue in VRF's claims in this case.</p> <p>To the extent Defendants object to the form of the question on the basis it "calls for a legal conclusion," that objection has been waived as Defendants did not specify the basis for their objection</p>

		and conduct the deposition with no speaking objections reserved, they could have specified as such. Having not done so, the risk of asking objectionable questions falls upon the party intending to offer deposition testimony as trial evidence.	during the deposition, stating only: "Objection."  Even so, the question calls for the application of facts to law which is not an objectionable legal conclusion.
51:24	52:8	<p>Relevance:</p> <p>The referral is no longer relevant to this case since it is no longer the potential source of any prior restraint. Any restriction on VRF's speech at this point is due to the amended statutes governing use of voter data.</p> <p>Further, the AG's position is contained in the pleadings in this matter and this testimony adds nothing of evidentiary value.</p>	<p>The question calls for the Attorney General's position on whether or not VRF has violated the New Mexico election code, which is relevant to VRF's claims regarding the Secretary of State's referral of VRF to the Attorney General for investigation and prosecution. It is also relevant to show the reasoning behind Defendants' actions in this case to deprive VRF of New Mexico voter data.</p> <p>Further, just because Defendants' may have merely stated a position in pleadings does not somehow preclude VRF from testing those assertions.</p>
53:18	53:25		
54:19	54:24		
68:11	68:18	<p>Relevance:</p> <p>The AG's view of misinformation is of no relevance to this case</p>	This testimony concerns the Attorney General's position regarding whether VRF's speech constitutes misinformation. The content of VRF's speech and Defendants' position regarding that speech are relevant to VRF's First Amendment claims as well as its NVRA claims to show Defendants' basis for denying VRF voter data and referring VRF for investigation and prosecution.
70:7	70:21	<p>Relevance:</p> <p>The witnesses legal conclusions remain irrelevant.</p>	The question of whether or not Local Labs has violated New Mexico election law was interjected by Defendants as a

			possible reason for refusing to fulfill VRF's requests for voter data and are thus relevant to illustrate Defendants reasoning for doing so.
72:1	72:19	<p>Relevance</p> <p>The Secretary has disclosed voter data to VRF and indicated her intention of continuing to do so under the same terms as other users of voter data. It is no longer relevant why requests were denied as it pertains to that particular transaction, since VRF may only receive prospective relief in this case.</p>	The question of whether or not Local Labs has violated New Mexico election law was interjected by Defendants as a possible reason for refusing to fulfill VRF's requests for voter data and are thus relevant to illustrate Defendants reasoning for doing so.
73:8	73:21	<p>Relevance:</p> <p>The testimony reiterates the litigation position articulated by the office in the pleadings and offers nothing of evidentiary value.</p>	This testimony is relevant to show Defendants' basis for conspiring to not fulfill VRF's requests for voter data and for criminal investigation. The cited testimony also, itself, references positions stated in pleadings which relate to VRF's claims that Defendants unlawfully denied VRF's requests for voter data.
73:22	74:13		
74:14	75:10	<p>Relevance:</p> <p>The Secretary has disclosed voter data to VRF and indicated her intention of continuing to do so under the same terms as other users of voter data. It is no longer relevant why requests were denied as it pertains to that particular transaction, since VRF may only receive prospective relief in this case.</p>	This testimony is relevant to VRF's claims that Defendants are unlawfully working together to deny VRF's requests for New Mexico voter data because it shows Defendants' purported reasons for the same.
84:8	84:18		
98:18	99:14		
100:1	101:16		



106:9	106:12	<p>Foundation; Relevance:</p> <p>The questioning does not establish that the AG's office has any means of directly ascertaining whether registrations have been cancelled or whether there is any way of determining whether registrations were cancelled for a particular reason.</p>	<p>The question merely asks for the Attorney General's knowledge. If the Attorney General does not possess such knowledge, the witness is entitled to say so.</p> <p>This question is also highly relevant as Defendants have themselves interjected the issue of canceled voter registrations into this litigation as a defense for denying VRF's requests for voter data. If the Attorney General is unaware of any canceled voter registrations yet works with the Secretary of State to deny VRF's voter data requests on that basis, then that shows Defendants' reasoning is mere pretext.</p>
128:16	129:14	<p>Relevance:</p> <p>Neither the denial of voter data nor the statute as written at the time of the deposition have any relevance to this litigation any longer. VRF is not entitled to retrospective relief on these issues.</p>	<p>The question of what is a permissible use of voter data is highly relevant to this litigation because Defendants have argued they are denying VRF's requests for voter data because they are not using the data for a permissible use. If the Attorney General cannot answer questions as to what is a permissible use under the law, that goes to show that the law, as written and applied, is vague and overbroad.</p>
130:20	131:16	<p>Relevance:</p> <p>Neither the denial of voter data nor the statute as written at the time of the deposition have any relevance to this litigation any longer. VRF is not entitled to retrospective relief on these issues.</p>	<p>The question of what is a permissible use of voter data is highly relevant to this litigation because Defendants have argued they are denying VRF's requests for voter data because they are not using the data for a permissible use. If the Attorney General cannot answer questions as to what is a permissible use under the law, that goes to show that the law, as written and applied, is vague and overbroad.</p>

144:7	144:16	<p>Relevance:</p> <p>As noted above, this is not relevant to VRF's claims, which can only address prospective relief.</p>	<p>This question directly relates to the legal basis for the Attorney General's criminal investigation of VRF, which VRF has argued is a basis of its First Amendment claims. If the Attorney General cannot say whether the legal basis previously articulated by the Attorney General's office is correct, then that shows that Defendants' stated basis for criminal referral and investigation is pretextual.</p>
156:10	156:15	<p>Foundation; Relevance:</p> <p>The document being addressed does not make promises regarding voter data, only "personal information of voters." The question and answer encapsulate the heart of the dispute in this case and this testimony adds nothing on that front.</p>	<p>The Attorney General's knowledge of VRF's consistent promise not to post New Mexico voter data online is highly relevant to Defendants' true reasons for denying VRF's requests for voter data which underpin VRF's First Amendment claims.</p>
159:2	159:11	<p>Requests attorney-client privileged information; relevance:</p> <p>The question calls for the contents of privileged communications and any substantive response would quite obviously violate that privilege.</p>	<p>It is unclear from Defendants' objection why they believe the above testimony to be privileged. Nonetheless, this testimony is not privileged because it does not ask for the actual communication between the Attorney General's office and the Secretary of State. Instead, the question only seeks to ascertain the fact of whether any communication happened.</p> <p>Whether or not the Attorney General advised the Secretary of State to deny VRF's request for voter data is highly relevant to the whether or not Defendants worked together to deny VRF's requests for voter data—a point which the Attorney General has argued throughout this litigation and in</p>

			the 10th Circuit on the basis of standing.
159:16	159:24		
160:22	161:17		
165:6	167:5		
167:16	172:24	<p>Relevance:</p> <p>At no point in this litigation has VRF produced evidence that would substantiate their claims that Catalist or i360 sell New Mexico Voter Data. In the absence of such evidence, the fact that they were not investigated is irrelevant.</p>	<p>This testimony concerns whether the Attorney General has criminally investigated other, similarly situated entities as VRF. This line of questioning is relevant to whether or not Defendants maintain a consistent interpretation of the New Mexico election code and whether they enforce that election code consistently, or discriminatorily in order to deprive VRF of New Mexico voter data under that pretext.</p>
176:19	177:9		
179:12	180:2	<p>Foundation; Relevance:</p> <p>The witness is a 30(b)(6) witness and is not charged with knowing how every independent Assistant AG would view any particular facts with regard to a potential investigation.</p>	<p>Defendants' mere objection to "foundation" is unclear. However, the foundation for the Attorney General's answer and the question itself is simply the Attorney General's factual knowledge. The Attorney General's lack of knowledge of or concern of other entities using New Mexico voter data in a way similar to VRF shows the discriminatory nature with which Defendants have acted towards VRF to deny VRF's requests for New Mexico voter data.</p> <p>As a 30(b)(6) witness, the purpose of the witness's testimony is to testify on behalf of the Attorney General. If the witness cannot truthfully answer the question, then Defendants' should have proffered a witness who could.</p>
180:12	180:16		
184:19	184:23	Relevance:	This testimony concerns the "clarity" of § 1-4-5.5 and its recent

		The former law is no longer relevant to this litigation.	amendments which is relevant to VRF's claim that the law is vague and overbroad.
186:12	186:16	Relevance:  The former law is no longer relevant to this litigation.	This testimony concerns the "clarity" of § 1-4-5.5 and its recent amendments which is relevant to VRF's claim that the law is vague and overbroad.

<b>Joseph Dworak</b> March 13, 2023 <b>Defendants' Designations</b>	
Begin	End
17:5	17:16



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Deputy Attorney General Joseph Dworak

March 13, 2023

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Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.

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1 gritty. So I want to fly through the beginning, and  
2 we're going to take a lunch break and get through  
3 this, do some foundational stuff before that.

4 So that all being said, do you have any  
5 questions? That all sounds good from the get-go  
6 here? Anything you take issue with?

7 **A. No questions.**

8 **Q. Perfect. And as we get started here, you**  
9 **know, if I refer to the Attorney General or the AG,**  
10 **just know that I'm referring to the office, not the**  
11 **Attorney General himself. It seems silly to say**  
12 **that, but nevertheless.**

13 **To start out here, I'm going to hand you**  
14 **what we've already marked as Exhibit 1.**

15 (Exhibit 1 marked.)

16 **A. Just so you know, that's the only thing I**  
17 **have with me is just a copy of the Exhibit A.**

18 **Q. Perfect. Okay. Can you tell me what this**  
19 **is?**

20 **A. This is a notice of the deposition for the**  
21 **30(b)(6) witness.**

22 **Q. And have you seen this document before?**

23 **A. I have.**

24 **Q. And you've just stated that you have a copy**  
25 **here with you?**

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1 **A. I do.**

2 **Q. Okay. If you turn to page -- well, it's**  
3 **marked page 2; it's actually the third page of the**  
4 **exhibit I handed you. Do you see a list of 10 topics**  
5 **on that page?**

6 **A. Yes.**

7 **Q. Have you seen this list of topics before?**

8 **A. I have.**

9 **Q. Are there any topics listed on that page on**  
10 **which you're not prepared to testify today?**

11 **A. No.**

12 **Q. Okay. Can you give me a walk-through of**  
13 **your background? Let's start with your education,**  
14 **undergrad, and law school.**

15 **A. Sure. I went to the University of New**  
16 **Mexico in Albuquerque, and received a degree in**  
17 **political science and psychology. I took a little**  
18 **bit of time off and worked, and then came back to**  
19 **Albuquerque, and went to the University of New Mexico**  
20 **School of Law.**

21 **Q. Okay. And can you walk me through -- I**  
22 **guess, let's start from your first job out of law**  
23 **school until your position now. If you could walk me**  
24 **through the roles you've had.**

25 **A. Well, I took a little bit of a break in the**

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1 **middle of law school and worked in Washington, D.C.**  
2 **for an FCC commissioner. And then I came back and**  
3 **finished my last semester of law school. And I**  
4 **started my first job here at the AG's Office.**

5 **Q. And can you walk me through the**  
6 **different -- have you had different roles in the AG's**  
7 **Office since you've been here?**

8 **A. I have, yeah. My first job was a line**  
9 **attorney in the Civil Division, which is now the Open**  
10 **Government Division. I had that job for about**  
11 **two-and-a-half years or so. And then I was the**  
12 **Deputy Director of the Open Government Division. And**  
13 **then -- also for about two-and-a-half years. And**  
14 **then I was the Civil Litigation Director also for**  
15 **about two-and-a-half years. Then I left this office**  
16 **for about a year-and-a-half, and then came back in**  
17 **January with the new administration as the Deputy**  
18 **Attorney General for Civil Affairs.**

19 **Q. Okay. What are your duties generally as**  
20 **the Deputy Attorney General?**

21 **A. They're evolving a little bit with the**  
22 **transition, with the new administration. But**  
23 **generally, I oversee several divisions, including the**  
24 **Open Government Division, the Civil Litigation**  
25 **Division, the Treaty of Guadalupe Hidalgo Division,**

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1 **and some other areas of the office, expanding on,**  
2 **including tribal work, government transparency, and**  
3 **some other areas in the civil side of the office that**  
4 **might not necessarily fall in the form of litigation.**

5 **Q. Who do you report to in your current role?**

6 **A. The Chief Deputy Attorney General.**

7 **Q. And do you have people that report directly**  
8 **to you?**

9 **A. Yes.**

10 **Q. And who would those people be? You can**  
11 **just tell me their roles. I don't need to know --**

12 **A. Well, any division director that's under**  
13 **me. We have one division that doesn't have a**  
14 **division director at the moment, so it's an exempt**  
15 **position we need to fill. So any management**  
16 **positions, or anyone that doesn't have a position**  
17 **that's filled would report to me.**

18 **Q. Can you tell me a little bit about the Open**  
19 **Government Division that you referenced? What kind**  
20 **of work does the Open Government Division do?**

21 **MS. LECOCQ: Objection. Go ahead.**

22 **A. Yeah -- well, one, I don't -- I mean, I**  
23 **could tell you generally, but that, the role of that**  
24 **division is going to change with the new**  
25 **administration also.**

3 (Pages 6 to 9)



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1 Q. I guess first question: What did that  
2 division do while you were working in that division?

3 MS. LECOCQ: Objection.

4 **A. Generally, provides representation and**  
5 **legal assistance to about 80, or so, public boards**  
6 **and commissions and small agencies in the state.**

7 Q. What's the scope of that representation?  
8 Is it primarily related to IPRA and open records and  
9 open meetings kind of issues, or is it broader than  
10 that?

11 MS. LECOCQ: I'm just going to do a  
12 standing objection to relevancy just so I don't have  
13 to keep objecting.

14 THE COURT: Sure.

15 **A. So it really depends. New Mexico is a very**  
16 **unique state. And it also is -- it's -- that role of**  
17 **representation really depends on the public body that**  
18 **we're working with. So some boards and commissions**  
19 **are administratively attached to other agencies. And**  
20 **those agencies have in-house counsel, and so the role**  
21 **is much more narrow, and only provides assistance,**  
22 **really, for matters that become before the public**  
23 **body. So disciplinary decisions and orders, rule**  
24 **making, other matters that fall within the purview of**  
25 **the public body, in terms of the things that need to**

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1 **be voted on in a public meeting, and others, they're**  
2 **broader because they're not administratively attached**  
3 **to another agency that provides legal counsel for**  
4 **things like contracts, and, you know, other matters**  
5 **that might be more of day-to-day work with the public**  
6 **body.**

7 Q. What was your involvement in this case  
8 before you were designated to be the representative  
9 for this deposition?

10 **A. I didn't have a specific involvement with**  
11 **the case.**

12 Q. And I guess I'm asking specifically first  
13 with the civil case itself, you didn't have any  
14 involvement?

15 **A. Not that I recall, no.**

16 Q. Okay. And what about the -- were you  
17 involved in any criminal investigation conducted by  
18 the Attorney General regarding Voter Reference  
19 Foundation?

20 MS. LECOCQ: Objection.

21 **A. Not that I recall, no.**

22 Q. What did you do to prepare to testify  
23 today?

24 **A. Well, I reviewed the pleadings, records in**  
25 **the case, so all of the pleadings that have been**

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1 **filed, the discovery, interrogatories, answers,**  
2 **requests for production; spoke with counsel; spoke**  
3 **with two special agents in the case.**

4 Q. Well, who were the special agents that you  
5 spoke to regarding this?

6 MS. LECOCQ: Objection.

7 **A. I should clarify -- I said with the case.**  
8 **They weren't with this case, but two special agents**  
9 **that I know I spoke to about later in a parallel**  
10 **proceeding, or parallel matter, I guess, is the**  
11 **proper term.**

12 Q. By the "parallel matter" do you mean the  
13 criminal investigation?

14 MS. LECOCQ: Objection.

15 **A. Yeah.**

16 Q. Just making sure.

17 Did you review the district court's  
18 decision which granted a preliminary injunction to  
19 our client last July?

20 **A. I'm familiar with that. I've looked at**  
21 **that. But that wasn't in preparation for this.**

22 Q. Okay. Have you reviewed any transcripts of  
23 any hearings in this matter?

24 **A. No, I don't believe I have.**

25 Q. Okay. Have you reviewed any transcripts of

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1 any depositions taken in this matter?

2 **A. No.**

3 Q. Did you help prepare any answers to any of  
4 the discovery responses that were given by the  
5 Attorney General's Office in this matter?

6 **A. No.**

7 Q. But you did say that you have reviewed  
8 those responses in preparation for today; correct?

9 **A. Yes.**

10 Q. I want to talk kind of just generally,  
11 before we dive specifically into VoteRef, or VRF,  
12 about the Attorney General's Office and its role in  
13 relation to voter data in general. And when I say,  
14 "voter data" here, I'm just going to adopt the  
15 statutory definition which says: Any information  
16 derived from the voter files. So know when I say  
17 "voter data" I'm meaning the same term that New  
18 Mexico law uses for that.

19 So, generally, what is the Attorney  
20 General's role regarding oversight of how voter data  
21 is used?

22 **A. Well, it very much would depend upon the**  
23 **context. But just like many laws in the state, the**  
24 **Office of the Attorney General is charged with**  
25 **enforcing New Mexico State law. And, you know, what**

4 (Pages 10 to 13)

Page 14

1 that enforcement looks like very much depends upon  
2 the facts of the situation.

3 Q. Is there a specific division or group of  
4 people in the Attorney General's Office that would  
5 kind of be assigned to policing unlawful use of voter  
6 data?

7 A. The individuals in our office that would be  
8 involved with issues related to voter data or any  
9 voter issues would depend upon how we obtain the  
10 information related to it.

11 So, I mean, yeah, I guess there is not a  
12 clear answer. It's not limited just to one group of  
13 people in the office.

14 Q. Does the Attorney General's Office have a  
15 role related to voter data, other than investigating  
16 potential unlawful use of voter data?

17 MS. LECOCQ: Objection.

18 A. The Office of the Attorney General's role,  
19 again, is very much dependent upon what the referral  
20 is. It could come from members of the public. It  
21 could come from a role with providing assistance to  
22 the Secretary of State, monitoring elections. It  
23 could come from a referral from the Secretary of  
24 State. It could come from a referral from somewhere  
25 else.

Page 15

1 Q. So let's say you, the Attorney General's  
2 Office, receives a complaint from a citizen about  
3 something related to their voter data. Would that be  
4 handled in-house, or would that be referred to, say,  
5 the Secretary of State's Office?

6 A. It depends on what the allegations are. I  
7 mean, many of those are often referred to the  
8 Secretary of State, which obviously is the agency  
9 charged with enforcing and reviewing election laws on  
10 a daily basis. And, you know, our office works in  
11 conjunction with them, if there is something that,  
12 you know, after their review, if there is something  
13 that we need to look at from a civil or criminal  
14 standpoint.

15 Q. I'm not asking for any advice you might be  
16 giving here. But does the Attorney General's Office  
17 advise the Secretary of State's Office if there is a  
18 question regarding whether voter data is being used  
19 unlawfully?

20 MS. LECOCQ: Objection.

21 A. I mean, generally, we certainly have the  
22 ability to -- and have -- I can't say that every time  
23 there is a question we would necessarily have to be  
24 involved, or have been involved.

25 Q. Does the Attorney General's Office provide

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1 advice to the Secretary about whether or not it  
2 should provide voter data to a requester?

3 MS. LECOCQ: Objection.

4 A. Is that speculative? I mean, I guess I'm  
5 not sure if you're asking has that happened in the  
6 past, or could that, or would that happen?

7 Q. Well, let's say: Has that happened in the  
8 past, has the Attorney General's Office given advice  
9 to the Secretary about whether it should provide  
10 voter data to a requester?

11 MS. LECOCQ: Objection.

12 A. I mean, part of -- certainly, some of that  
13 would be privileged, if we were --

14 Q. And I'm not asking for the content.

15 A. Yeah, I mean those, questions certainly  
16 have come up in the past.

17 Q. Would you agree that the Attorney General's  
18 Office has a duty to investigate the actual or  
19 potential misuse or unlawful use of voter data?

20 A. Can you ask that question again?

21 Q. So would you agree that the Attorney  
22 General's Office has a duty to investigate the actual  
23 or potential misuse of voter data?

24 A. That question would depend on the  
25 circumstances. I mean, if it's more appropriate for

Page 17

1 that -- at least initial investigation or review to  
2 be done by, say, the Secretary of State, who is  
3 charged statutorily with enforcing and reviewing  
4 those laws, then you might start there.

5 So it doesn't mean that anytime that there  
6 is an alleged allegation it would necessarily have to  
7 be us exclusively, or us first. We certainly -- our  
8 office certainly has the ability and duty, when  
9 appropriate, to investigate those kind of issues.

10 Q. And what if the Attorney General's Office  
11 receives a referral from the Secretary of State's  
12 Office saying: Hey, we think that voter data is  
13 being used unlawfully, does the Attorney General's  
14 Office then have a duty to investigate that?

15 A. We certainly have the authority to. I  
16 don't know if we have an affirmative duty to.

17 Q. Has the Attorney General's Office ever  
18 initiated an investigation into the use of voter data  
19 without receiving a referral from, say, the Secretary  
20 of State's Office or a citizen complaint?

21 MS. LECOCQ: Objection.

22 A. That's outside of the scope of these  
23 questions. I don't know the history of, you know,  
24 100 year history of our office. I couldn't speak to  
25 that.

5 (Pages 14 to 17)

Page 18

1 Q. Are you aware of the Attorney General  
2 initiating an investigation into the use of voter  
3 data on its own volition since you've been at the  
4 Attorney General's Office?

5 MS. LECOCQ: Objection.

6 A. From my own standpoint? I can't speak to  
7 the office, because again, that's outside of the  
8 scope of what I prepared for with this deposition.  
9 But not that I'm aware of. But I wouldn't  
10 necessarily be aware of it either because of my role  
11 inside the office.

12 Q. Okay. Well, I'm going to move right in. I  
13 want to talk generally about the Attorney General's  
14 positions on how New Mexico law regulates voter data.  
15 And I want to start from a high level, just -- we're  
16 going to talk about some of the statutes that have  
17 been raised in this case. And then kind of move into  
18 how that applies to our present case. But, just  
19 generally, what restrictions does New Mexico law  
20 place on how voter data may be used?

21 MS. LECOCQ: Objection.

22 A. Yeah, I don't -- I wasn't prepared to talk  
23 about all of the different types of laws and the  
24 Election Code that could potentially be implicated  
25 related to voting. So could you be a little bit more

Page 20

1 under -- let's limit it to 1-4-5.5?

2 MS. LECOCQ: Objection.

3 A. Well, first, I'll say that there are other  
4 laws that are implicated here. This can't be read in  
5 just a vacuum. But clearly, requesters of this  
6 information can only use voter data for these listed  
7 purposes, which include governmental purposes and  
8 election campaign purposes. And it also explicitly  
9 states that the data shall not be made available or  
10 used for unlawful purposes. And so I know that there  
11 is another law that clarifies use and limitations of  
12 voter data.

13 Q. I noticed when you were going over the  
14 permissible uses there, you omitted election from the  
15 uses that are permissible. Is that intentional?

16 MS. LECOCQ: Objection.

17 A. Well, I was just clarifying the two that  
18 are defined here in the statute.

19 Q. But you agree that Subsection C of this  
20 statute says can be used for -- shall be used for  
21 governmental or election and election campaign  
22 purposes only?

23 MS. LECOCQ: Objection.

24 A. That's what the statute says.

25 Q. Okay. You mentioned that there are other

Page 19

1 specific?

2 Q. Well, let's start with what restrictions  
3 does New Mexico law place on the sharing or  
4 dissemination of voter data?

5 MS. LECOCQ: Objection.

6 A. Yeah, I mean, I have the same answer. I  
7 can't speak generally to that. But as some of the  
8 examples that relate specifically to this case tie  
9 into the limitations on the use of data, that they  
10 have to be for authorized purposes. And so that's  
11 laid out pretty clearly in the statute what those  
12 purposes can and can't be used for, and the process  
13 of the Secretary of State's Office has for requesting  
14 such data.

15 Q. What are the purposes that voter data can  
16 be used for? And let's limit it to under Section  
17 1-4-5.5, which is the one implicated in this case.

18 A. Do you have a copy of the statute?

19 Q. I'm sure we do. We can go ahead and mark  
20 this as Exhibit 2.

21 (Exhibit 2 marked.)

22 Q. If you can let me know when you've had time  
23 to review it.

24 A. Yeah, I finished.

25 Q. So for what purposes can voter data be used

Page 21

1 laws that are implicated here, I believe was the word  
2 you used. What other laws are implicated?

3 A. Well, there is a number. I mean, there is  
4 statute, the entire Election Code, of course, and  
5 then there is regulations that are adopted by the  
6 Secretary of State under the state Election Code.

7 I know that there is -- I can't recall the  
8 section, but in Article 5, I believe, there is a  
9 section that describes unauthorized use and what that  
10 includes, which is prohibited under state law.

11 Q. What's the relationship, then, between this  
12 1-4-5.5 and this other section that you're referring  
13 to?

14 MS. LECOCQ: I'm going to have a standing  
15 objection for legal conclusion, so I quit  
16 interrupting you.

17 MR. MUELLER: Certainly.

18 A. Yeah, well, I'll say one -- a legal  
19 conclusion that I could draw is not necessarily the  
20 conclusion of our office. And also these are laws  
21 that govern the Secretary of State's Office. And so,  
22 you know, it's difficult for me to answer, you know,  
23 how these should be interpreted when this isn't a  
24 statute that governs activity of the office of the  
25 Attorney General.

6 (Pages 18 to 21)

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1 plausibly alleged that VRF was violating New Mexico  
2 law?

3 **A. Our office hasn't made a determination --**  
4 **there is different laws here, right, and criminal**  
5 **implication and actions of the Secretary of State's**  
6 **Office. So, I mean, our position was to defend the**  
7 **Secretary of State. There wasn't a separate**  
8 **determination by our office.**

9 Q. What do you mean when you say your  
10 "position was to defend the Secretary of State"?

11 **A. Well, I mean, that's the basis of this**  
12 **litigation is the Secretary of State's Office, an**  
13 **agency of the state, was sued, and we were defending**  
14 **the Secretary of State's position and the actions**  
15 **that they had taken.**

16 Q. Okay. But let's look at this. This  
17 referral is dated December 20, 2021; correct?

18 **A. Correct.**

19 Q. Do you know when your office received this  
20 referral?

21 **A. I don't see a time stamp. I don't know**  
22 **what day, if it came -- well, it says email, so I**  
23 **would assume it was emailed that day. But I don't --**  
24 **I can't confirm that.**

25 Q. Did your office receive this referral prior

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1 to VRF filing its lawsuit?

2 **A. These dates I recall, but I'd have to**  
3 **refresh my memory on what the dates were. I know**  
4 **some of these dates were close together.**

5 Q. If I tell you that VRF filed its lawsuit in  
6 late March of 2022, does that refresh your  
7 recollection?

8 **A. Yes.**

9 Q. Okay. So did your office receive this  
10 referral before VRF filed its lawsuit?

11 **A. Yes.**

12 Q. So you were saying that -- I asked a  
13 question about, at the time it received the referral,  
14 did the Attorney General agree that the facts  
15 outlined in the referral plausibly alleged that VRF  
16 was violating the law?

17 **A. I mean, some of that is subject to attorney**  
18 **work product and attorney-client privilege with the**  
19 **Secretary of State's Office. I mean, I think the**  
20 **work done by our office clearly shows the position**  
21 **that we took, which supported the determination by**  
22 **the Secretary of State that New Mexico laws were**  
23 **being violated.**

24 **Q. Is that the Attorney General's position, as**  
25 **we sit here today, that VRF has violated New Mexico**

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1 law?

2 **A. That's the position that we have supported**  
3 **through this litigation. And I think, you know, what**  
4 **penalties or what additional laws could be violated**  
5 **is like an independent matter from a criminal**  
6 **standpoint, it's different from upholding any, you**  
7 **know, administrative decision by the Secretary of**  
8 **State, which I think is important to note.**

9 Q. Setting the referral aside, and what it  
10 says the positions that the SOS took in the referral,  
11 is the Attorney General's position, as we sit here  
12 today, that Voter Reference Foundation has violated  
13 New Mexico law?

14 MS. LECOCQ: Objection.

15 **A. Yeah, again -- and I mean, I know we're**  
16 **going to get to this -- but there are parallel issues**  
17 **in questions. And this case is, you know, primarily**  
18 **focused on the administrative decision of the**  
19 **Secretary of State and our position which supports**  
20 **it, which is yes.**

21 You know, could there be additional  
22 determinations that our office could make? Yes. But  
23 the office hasn't taken independent action or  
24 taken -- you know, made separate decisions apart from  
25 the specific issue related to this case, which is the

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1 **determination by the Secretary of State.**

2 Q. You used the term "administrative decision"  
3 a few times there. Can you tell me what you mean by  
4 that?

5 **A. Well, the decision by the Secretary of**  
6 **State is not a judicial decision. It's not something**  
7 **that required a court determination to make. And so**  
8 **they chose to withhold this voter data from -- as an**  
9 **administrative action.**

10 Q. So when you say "administrative decision,"  
11 you're referring to them not giving data to VRF?

12 **A. Correct.**

13 Q. You're not referring to them making this  
14 referral?

15 **A. Correct.**

16 Q. Okay. I just --

17 **A. No, that's a good distinction.**

18 **Q. I'm trying to think how to ask this. In**  
19 **terms of this civil litigation, is the Attorney**  
20 **General taking the same position as the SOS as to the**  
21 **legality of Voter Reference's actions?**

22 MS. LECOCQ: Objection.

23 **A. Well, I think that's pretty clear in the**  
24 **pleadings that we filed and representing the**  
25 **Secretary of State in the pleadings, so yes.**

14 (Pages 50 to 53)

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1 Q. And I think we can acknowledge a  
2 difference, that there is one role for the Attorney  
3 General's Office that is representing Secretary of  
4 State in the litigation. There is another role,  
5 which is the Attorney General is the chief law  
6 enforcement officer, and is, itself, a defendant in  
7 the litigation. Do you agree with that?

8 **A. Yes. And yeah, there are many roles that**  
9 **the Attorney General's Office plays within the state.**

10 Q. And so I suppose I'm saying that just  
11 because the Attorney General's Office is representing  
12 the Secretary of State in this litigation, it doesn't  
13 necessarily have to mean that the Attorney General is  
14 taking all of the same legal positions as the  
15 Secretary of State; correct?

16 **A. I'd have to see if there was anything in**  
17 **the pleadings that have made that position. But**  
18 **that's not impossible, certainly.**

19 **Q. Are you aware of any positions that the**  
20 **Attorney General's Office, as a party to this**  
21 **lawsuit, has taken that are different than positions**  
22 **taken by the Secretary of State's Office?**

23 **A. Public positions, actions, I'm not aware of**  
24 **any, no.**

25 Q. I want to get into the referral more, but

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1 what does it mean for a case to be -- let's say --  
2 let me rephrase this.

3 If I refer to a case as open or active, can  
4 we agree that that means the same thing? I think you  
5 just used the word "open." They've used the term  
6 inactive?

7 **A. Sure. I think much of this could very well**  
8 **be subjective, right, but I think those two terms are**  
9 **very synonymous.**

10 Q. So what does it mean for an investigation  
11 to be active or open?

12 **A. That it's under investigation.**

13 Q. What does it mean for a case to be closed?

14 **A. That there had been some dispositive**  
15 **action. Whether there had been a prosecution,**  
16 **whether there was, you know, findings taken at face**  
17 **value would not amount to any type of crime, so,**  
18 **therefore, the dispositive action was that, you know,**  
19 **no law was implicated. It could mean that the**  
20 **investigation was put on hold, you know, or something**  
21 **else. It wasn't, you know, determined if there was a**  
22 **violation or not.**

23 Q. Okay. What does inactive mean? Or let me  
24 be more specific. What is your understanding of what  
25 it meant for a case to become inactive at the time

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1 before we do that I want to ask some questions  
2 generally before we get into the stuff that your  
3 counsel and I have already negotiated some protection  
4 for. And I think this is in your discovery response.  
5 So your counsel informed us last week that the  
6 investigation into VRF became inactive, I believe, on  
7 April 12, 2022; is that correct?

8 **A. That's correct.**

9 Q. What are the different -- I'm going to call  
10 "inactive" a status, okay? What are the different  
11 statuses of investigation by your office?

12 **A. That's a great question. I can speak**  
13 **generally to my understanding. I have not -- some of**  
14 **that very much is dependent upon the administration,**  
15 **which has changed, and the individuals. I think**  
16 **those categories are not set in stone. Because what**  
17 **they might mean might be somewhat subjective.**

18 **But our office -- criminal matters in our**  
19 **office, the most common would be open or closed. And**  
20 **I think the inactive status is -- and you could use**  
21 **different terms, and imagine different terms have**  
22 **been used in the past, where it's not as definitive,**  
23 **because, you know, a formal position might not be**  
24 **taken. And that could be for a variety of reasons.**

25 Q. This is going to seem very rudimentary, but

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1 this case became inactive, which was April 12, 2022?

2 **A. I was not aware of the -- at that time, in**  
3 **2022, I wasn't even in the office. When did I --**  
4 **yeah, I wasn't even in our office at that time. So I**  
5 **mean, certainly at that time I didn't have any idea.**  
6 **But I know that speaking to individuals within our**  
7 **office, that term means that, just like I said**  
8 **before, that it wasn't under active investigation;**  
9 **that it was not -- you know, there was nothing**  
10 **happening to the case. No final determination was**  
11 **made. And that there was no, you know, ongoing**  
12 **involvement from our office.**

13 Q. I want to clarify one thing. You said  
14 closed meant that there is some kind of dispositive  
15 action, which I believe you said can include  
16 prosecution, findings of facts that amount to a  
17 crime, or you said that it may just be that it's on  
18 hold?

19 **A. No, I said that was if it was inactive --**

20 Q. Okay.

21 **A. -- not closed.**

22 Q. So if it's on hold, it would likely be  
23 labeled as inactive or some similar term?

24 **A. Yeah.**

25 Q. Okay.

15 (Pages 54 to 57)



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1 time?

2 **A. Well, it depends on -- I guess there is two**  
 3 **different -- this is a criminal -- if you're**  
 4 **referencing a criminal determination as to whether it**  
 5 **was a criminal law being violated, there certainly**  
 6 **was not a determination made at the time this letter**  
 7 **was received.**

8 Q. Okay. If we move on a little further in  
 9 that paragraph, it says, "We have attached our  
 10 office's communication with Mr. Lippert regarding his  
 11 voter data request. We believe that this data was  
 12 illegally provided by Mr. Lippert or Local Labs to  
 13 VoteRef.com and is being used against New Mexico  
 14 state law." Did I read that correctly?

15 **A. Yes.**

16 Q. So at least at this time, the Secretary of  
 17 State was conveying its position to the Attorney  
 18 General that the transfer of data from Local Labs to  
 19 VoteRef was illegal; correct?

20 **A. That's what they're writing in this letter.**

21 Q. It then says, "Swift action is needed as  
 22 voter data can quickly be manipulated and used to  
 23 spread election misinformation."

24 Did I read that incorrectly?

25 **A. Yes.**

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1 Q. Is spreading election misinformation a  
 2 crime under New Mexico law?

3 MS. LECOCQ: Objection.

4 **A. That is not a defined term that has**  
 5 **elements that would constitute a crime. But I think**  
 6 **this isn't written in any type of legal document**  
 7 **that's laying out charges and elements of a crime. I**  
 8 **think it's just speaking.**

9 Q. I understand that, and I appreciate the  
 10 distinction. But I'm just asking, you know, for your  
 11 position, as the representative of the New Mexico  
 12 Attorney General's Office, if it is a crime under New  
 13 Mexico law to spread election misinformation?

14 MS. LECOCQ: Objection.

15 **A. Yeah, I mean, I can't draw a legal**  
 16 **conclusion. And also, I mean, there aren't elements**  
 17 **to that. But I think that is part of protecting**  
 18 **voter information, so -- and they're alluding -- I'm**  
 19 **assuming that they're alluding to public policy,**  
 20 **which is certainly, you know, underlined in all of**  
 21 **the Election Code and the purpose for these statutes.**

22 Q. Okay. Are you aware of any New Mexico  
 23 state statute which makes it unlawful to spread  
 24 election misinformation?

25 MS. LECOCQ: Objection -- never mind, go

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1 ahead.

2 **A. Not that term. But I think that term is**  
 3 **also not defined. Protecting information is part of**  
 4 **election information, misinformation.**

5 So again, I think read in a vacuum, no,  
 6 there is no reference to election misinformation or  
 7 spreading election misinformation as a cause of  
 8 action or elements to it. But I think that's  
 9 speaking broadly, and does capture many of the  
 10 purposes of the Election Code.

11 Q. Does VRF's publication of voter data on its  
 12 website constitute election misinformation?

13 MS. LECOCQ: Objection.

14 **A. I don't believe our office has taken a**  
 15 **formal position on that, but I believe that the**  
 16 **Secretary of State's Office has. And we would**  
 17 **support that position, as much as they've made that a**  
 18 **defendant.**

19 Q. Okay. If we look at the next section, it  
 20 lays out some facts -- it appears to be facts upon  
 21 which the basis of this referral are grounded. And  
 22 it talks about how Mike Lippert was provided voter  
 23 data by the Secretary of State's Office on April 15,  
 24 2021. Is that correct?

25 **A. Yes.**

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1 Q. It then says, "Mr. Lippert was provided the  
 2 entire statewide voter file after he paid \$5,378.12,  
 3 and signed a vote information authorization form  
 4 swearing they, quote, 'will not use or make available  
 5 to others to use the requested material for purposes  
 6 others than governmental election research and  
 7 campaign purposes, under penalty of law.'" Did I read  
 8 that correctly?

9 **A. Yes.**

10 Q. Did Local Labs commit false swearing under  
 11 that term quoted there, when it transferred the data  
 12 from itself to VRF?

13 MS. LECOCQ: Objection.

14 **A. Yeah, I think you're asking for a legal**  
 15 **conclusion, which I can't make. I'm not sure if this**  
 16 **was addressed in positions taken by our office or the**  
 17 **Secretary of State in pleadings.**

18 Q. If the Secretary of State's Office took the  
 19 position that that was an unlawful transfer, which it  
 20 appears that they did from the part we just read  
 21 above, does the Attorney General's Office have any  
 22 reason to disagree with that position?

23 MS. LECOCQ: Objection.

24 **A. Again, it would be difficult for me to**  
 25 **analyze that and put it in context with anything that**

18 (Pages 66 to 69)



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1 we filed with the litigation, because, you know,  
 2 there could have been nuances to any position or  
 3 argument we've made. And I don't want to  
 4 misrepresent anything. But I don't see why we  
 5 wouldn't agree and support the Secretary of State's  
 6 position with that.

7 Q. Okay. And I think, again, you know, I'm  
 8 asking for positions now based off of the facts and  
 9 the law, not necessarily, you know, just reciting the  
 10 positions that have been taken.

11 So the facts in here as alleged -- in fact,  
 12 as alleged in the verified complaint in our federal  
 13 lawsuit -- admit that Local Labs transferred the data  
 14 to VRF.

15 Okay. Knowing that, did Local Labs commit  
 16 false swearing by transferring that data from VRF  
 17 based off the quoted term here?

18 MS. LECOCQ: Objection.

19 A. Yeah, I can't draw that conclusion. But I  
 20 would say, generally, that would make sense to me. I  
 21 mean, that's logical.

22 Q. Okay. That quoted section says, "Will not  
 23 use or make available to others to use, the requested  
 24 material for purposes other than governmental  
 25 election research and campaign purposes under penalty

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1 of law." I read that correctly again, did I not?

2 A. Yes.

3 Q. Do you agree with me that, if Local Labs  
 4 makes the data available to someone for a  
 5 governmental election research or campaign purpose,  
 6 it has not violated the agreement there in that  
 7 quoted section?

8 MS. LECOCQ: I'm going to just do a  
 9 standing objection. I think this is outside the  
 10 scope of our topics. I'll just leave it at that.

11 A. So, at which step this sharing of  
 12 information violated New Mexico law, one has to be  
 13 taken in context. And that context is what happened,  
 14 right? It may not be clear exactly at what point the  
 15 misuse of data occurred.

16 But certainly, the end result, which was  
 17 published in a way that allowed no control over the  
 18 use of it, violated the restricted use of the data,  
 19 right, the prohibited uses that are allowed for by  
 20 statute.

21 So there certainly is a good argument to be  
 22 made that at that point sharing could have limited  
 23 that control. But you could make the argument in the  
 24 alternative as well. And I understand that. But, I  
 25 mean, you know, this issue wasn't resolved from just

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1 at one singular point did the violation occur.

2 I don't know if that answers -- I'm happy  
 3 to try to better answer your question.

4 Q. I understand what you're saying. But I  
 5 believe one of the positions taken in this litigation  
 6 is that, you know, Local Labs committed false  
 7 swearing, because they agreed to this term, and then  
 8 they gave data to VRF.

9 Knowing that, I'm asking if Local Labs gave  
 10 the data to VRF for purposes that were governmental,  
 11 election research, or campaign purposes, would that  
 12 still be a violation?

13 A. It could be if they lost control, and  
 14 therefore, you know, in an agency relationship, you  
 15 know, that argument could be made. And, again,  
 16 that's dependent upon all of the facts in this fact  
 17 pattern, which, you know, there were more obviously  
 18 beyond that, at which point the issue was raised.

19 At that point alone, yeah, arguably maybe  
 20 not. But that's not where the facts ended.

21 Q. So does that become a false swearing  
 22 because VRF published the data on its website?

23 A. I think arguably that's part of it, at  
 24 least part of it.

25 Q. What if Local Labs didn't know how VRF was

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1 going to use the data?

2 MS. LECOCQ: Objection.

3 A. Again, that's a hypothetical that -- I  
 4 mean, I'm not going to answer hypothetical questions  
 5 that our office certainly hasn't taken a position on,  
 6 and the Secretary of State certainly hasn't taken a  
 7 position on, at least in terms of conclusions of law.

8 Q. If VRF has taken the position that it posts  
 9 this information online so that the public can police  
 10 errors in voter records, is that a governmental  
 11 purpose under New Mexico law?

12 MS. LECOCQ: Objection.

13 A. Arguably, no.

14 Q. Okay. I get arguably. But is it the  
 15 Attorney General's position that the publication of  
 16 voter data online, so that citizens could police the  
 17 voter records, was not a governmental purpose?

18 MS. LECOCQ: Objection.

19 A. Yeah, I think that position has been made  
 20 pretty clear in the pleadings that we have taken that  
 21 position.

22 Q. Is it the Attorney General's position that  
 23 that same posting was not an election purpose?

24 MS. LECOCQ: Objection.

25 A. Well -- and again, our office's position

19 (Pages 70 to 73)

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1 has only been made clear through these pleadings. I  
2 mean, there is not any other action or position that  
3 we've taken.

4 I think the position was the Secretary of  
5 State's Office that we're supporting and defending.  
6 So, you know, indirectly, yes.

7 Q. So the Attorney General's Office is taking  
8 the same position as the Secretary of State's office  
9 with regard to whether or not the posting was  
10 election related?

11 MS. LECOCQ: Objection.

12 A. Yeah, I mean our position has been  
13 consistent with the Secretary of State's.

14 Q. Is that your position as the attorneys  
15 defending the Secretary of State, or is that the  
16 Attorney General's position as a party to this case?

17 A. I think that position has been made clear  
18 that it's both.

19 Q. Same question: Is it the Attorney  
20 General's position, as a party in this case, that  
21 this -- the publishing of voter data was not for a  
22 research purpose?

23 MS. LECOCQ: Objection.

24 A. And you mean the publishing for the public;  
25 is that correct, for anyone?

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1 Q. Upon receiving this, to determine if a  
2 violation occurred, would the Attorney General's  
3 Office investigate whether, in fact, this voter data  
4 was online?

5 MS. LECOCQ: Objection.

6 A. Are we -- so we're speaking to the criminal  
7 referral; is that correct?

8 Q. Yes.

9 A. I think any type of referral -- this one  
10 included -- would require a thorough review of the  
11 facts and the law. So I mean, that's certainly one  
12 of the facts that would have to be considered.

13 Q. And would the Attorney General's Office  
14 investigate the purpose for which the data was being  
15 posted online?

16 MS. LECOCQ: Objection.

17 A. Again, I mean, any review of alleged  
18 violations of law, whether criminal or civil, would  
19 necessarily require that, because that's one of the,  
20 you know, elements of or conditions of the data use  
21 under the statute.

22 Q. And would the Attorney General investigate  
23 how VRF obtained the data?

24 MS. LECOCQ: Objection.

25 A. I mean, again, all of this is very fact

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1 Q. Yes, I'm speaking about the ultimate  
2 publication of the data online to the public.

3 A. Yes. Yes, that's our position. That's my  
4 understanding that's the position of the Secretary of  
5 State's Office and our office as well.

6 Q. And is it the position of the Attorney  
7 General's Office, as a party to this litigation, that  
8 that public posting on the website was not for a  
9 campaign purpose?

10 A. Yes.

11 Q. When the Attorney General's Office received  
12 this referral, what facts did it need to figure out  
13 to determine if a violation occurred?

14 MS. LECOCQ: Objection.

15 A. Yeah. I mean, that's -- that analysis, I  
16 think, would be dependent on many things, including  
17 the position the individuals that did the analysis --  
18 so I can't speak to exactly what we would require,  
19 you know, these five questions be answered. But I  
20 mean, I think we've discussed this generally to  
21 determine under, you know, the review and actions  
22 taken by the Secretary of State, whether that  
23 position was supported by law, and you know, whether  
24 the publication and use of this data violated any of  
25 the Election Code or related statutes.

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1 specific with, you know, where the -- where any  
2 investigation is at, in terms of timing; what other  
3 information is needed from agencies that refer; what  
4 type of allegations are being raised, what laws are  
5 being implicated. And so I can't speak to the, you  
6 know, exactly what happened or should have happened  
7 with this investigation with this specific case,  
8 right?

9 Q. I suppose the position taken in the  
10 litigation is that the publication of the voter data  
11 on the website to the general public violated New  
12 Mexico law. What more would the Attorney General's  
13 Office need to determine other than that the data was  
14 posted online to the general public?

15 MS. LECOCQ: Objection.

16 A. I'm -- in terms of a criminal  
17 investigation?

18 Q. Yes.

19 A. I mean, a criminal investigation can branch  
20 out and look at many different elements of law. So I  
21 mean, I can't speak to whether or not, you know, this  
22 might cause review of other statutes, right, other  
23 criminal laws being implicated. I mean, it's very  
24 fact specific. I mean, specific to this -- I guess,  
25 yeah, I'm not really sure -- I guess I'm not really

20 (Pages 74 to 77)

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1 the issue. I'm not asking about the -- you know,  
2 policy decisions, or likelihood of success of an  
3 actual prosecution. But certainly the decision about  
4 whether or not the law was violated, or a position on  
5 that issue is resolved before all those other things  
6 are considered.

7 So I'm asking -- knowing that we admitted  
8 to what seems like the relevant facts for determining  
9 if we violated the law under this theory, are there  
10 other facts -- facts only, not other  
11 considerations -- that the Attorney General's Office  
12 needed to investigate to take a position on this  
13 issue?

14 MS. LECOCQ: Objection. Answer the  
15 question, Joe.

16 But before we get there, I think if you  
17 wanted to know specifically why the Attorney  
18 General's Office has not sought out other facts, we  
19 can answer that. But that goes to the stuff that's  
20 confidential.

21 MR. MUELLER: Let's finish this question  
22 and, then I'll go into that, because I think that  
23 might be causing --

24 MS. LECOCQ: Yeah.

25 **A. Yeah.**

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1 Q. So if you could answer that question, I  
2 appreciate it. If it needs to wait for me to ask you  
3 the stuff that's going to be protected, I can  
4 appreciate that.

5 **A. Yeah. And I think what's important to note**  
6 **here is that a decision from our office, or a**  
7 **position from our office, if we're talking about a**  
8 **formal position, is different than internal, you**  
9 **know, does an attorney believe that a law was**  
10 **violated.**

11 **When our office takes positions on criminal**  
12 **matters, it's a very big deal. And so those other --**  
13 **what I'm also calling facts, because they are facts**  
14 **and other things that affect any type of criminal**  
15 **investigation by our office -- have to be considered.**  
16 **We cannot make decisions in a vacuum in criminal**  
17 **cases.**

18 **I don't think any law enforcement agency,**  
19 **prosecutorial law enforcement agency, can do that.**  
20 **It's just not -- I mean, maybe it's a rare example,**  
21 **but, you know, you can't do that. This office cannot**  
22 **take positions on pieces of a criminal investigation,**  
23 **you know, without considering all of these other**  
24 **things that we've discussed.**

25 Q. Okay. I'm going to go into the actual

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1 investigation of VRF and some of the questions that  
2 we know are going to be under our agreement. I don't  
3 think all of these questions are subject -- at least  
4 not to the AEO counsel restrictions -- but I've  
5 marked in my outline where I think that's going to  
6 come up. So I will disclaim that before I ask those.

7 MS. LECOCQ: All right.

8 **Q. Let's start with: Did the Attorney General**  
9 **conduct an investigation into VRF's activities prior**  
10 **to April 12, 2022?**

11 **A. The office opened an investigation.**

12 **Q. Okay. Did it take steps to actually**  
13 **investigate the facts and theories as raised in the**  
14 **Secretary of State's referral?**

15 **A. It, at least, began reviewing, you know,**  
16 **the laws that were implicated, the evidence that was**  
17 **received from the referral from the Secretary of**  
18 **State's Office.**

19 Q. Okay. I'll just -- so this part, we'll  
20 call it Attorneys Eyes Only, and I'll let you know  
21 when we're outside of that restriction.

22 So the investigation was, say, moved from  
23 active or open to inactive on April 12, 2022;  
24 correct?

25 **A. Yes.**

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1 Q. What was the reason for why it was moved to  
2 inactive?

3 **A. That was a few months after the case was**  
4 **transferred. The investigation was transferred to**  
5 **the FBI.**

6 Q. Was that decision in any way motivated by  
7 VRF filing the present lawsuit?

8 **A. No.**

9 Q. Does the Attorney General's Office continue  
10 to play any role in that investigation by the FBI?

11 **A. No.**

12 Q. Is it possible for the Attorney General's  
13 investigation to be reopened or reactivated in your  
14 office?

15 **A. Yes.**

16 Q. Has the AG conducted any sort of  
17 investigation of VRF since April 12, 2022?

18 **A. No.**

19 MS. LECOCQ: Objection. I just want to  
20 clarify, criminal or civil?

21 MR. MUELLER: Let's say criminal first.

22 **A. No criminal.**

23 Q. Okay. And what about civil investigation?

24 **A. The civil investigation related to this**  
25 **litigation and our work with the Secretary of State.**

22 (Pages 82 to 85)

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1 Q. And are you aware, generally, of what the  
2 purpose of these communications were?

3 A. I am.

4 Q. And what was that purpose?

5 A. To -- the purpose -- similar -- well,  
6 except this was on our own, we initiated this  
7 communication -- but it was similar to the  
8 communication initiated by California, which is  
9 normal by our office to consult points of contact in  
10 other attorneys general offices, to see if similar  
11 issues are being addressed by other offices, if they  
12 have any perspective on the issue, if it's a regional  
13 or potentially national issue. And so I think that  
14 was the -- that's my understanding of the purpose.

15 Q. Was this part of the criminal investigation  
16 of Voter Reference Foundation?

17 A. No.

18 Q. Does the Attorney General have any evidence  
19 that VRF has manipulated voter data?

20 MS. LECOCQ: Objection.

21 A. Yeah -- well, one, I wouldn't be able to  
22 speak to the -- any type of investigative work  
23 product that persons that we may or may not be  
24 looking at. And I'm not aware of manipulation -- but  
25 I am not aware of manipulation arguments in any of

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1 Q. Is the Attorney General's Office aware of  
2 anyone using VRF's website for unlawful purposes?

3 MS. LECOCQ: Objection, same objection.

4 A. Again, yeah, I wouldn't know, and I  
5 couldn't speak to criminal investigation of that.  
6 But I think, you know, using it -- I mean, the fact  
7 that it's out there and in an unrestricted setting,  
8 so anyone could use it, is the unauthorized use,  
9 because there is no control over how people use it.  
10 That, itself, is the issue.

11 Q. So is a person committing unlawful use by  
12 accessing the data that's on the website, or that was  
13 on the website?

14 A. That's a great question. But I don't think  
15 that's a conclusion that our office has come to yet.  
16 Because I don't think individuals access this data  
17 that's out there is part of any of the analysis or  
18 positions our office has taken.

19 Q. Is the Attorney General aware of anyone  
20 using the data that was posted on VRF's website to  
21 stalk any individual?

22 MS. LECOCQ: Objection.

23 A. I wouldn't be able to speak to any type of  
24 criminal investigation, which, you know, would  
25 obviously be more serious for a question of that

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1 the civil litigation.

2 Q. Is the Attorney General's Office aware of  
3 VRF misrepresenting any voter data that was posted on  
4 its website?

5 A. Misrepresenting any voter data? In the  
6 civil litigation?

7 Q. I'm asking if the Attorney General's Office  
8 has any knowledge that VRF has misrepresented any  
9 data that was posted on its website?

10 MS. LECOCQ: Objection.

11 A. Yeah, I wouldn't be able to speak to any  
12 potential criminal investigation that may have been a  
13 part of that question. But from the civil context,  
14 I'm not aware of that being raised.

15 Q. And I suppose, given your answer here, I'm  
16 just going to ask your counsel if you're invoking a  
17 privilege as to not disclose the evidence that the  
18 Attorney General might have from its criminal  
19 investigation regarding the manipulation or  
20 misrepresentation of voter data by VRF?

21 MS. LECOCQ: That's right.

22 MR. MUELLER: Can we get on the record what  
23 the privilege assertion is?

24 MS. LECOCQ: Investigative work product.  
25 Attorney client.

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1 context. But I don't believe that there was any  
2 evidence that we introduced as part of a civil  
3 litigation or have said publicly of individual cases  
4 that actually have occurred.

5 Q. Is the Attorney General aware of anyone  
6 using data that was posted on VRF's website to harass  
7 any other individual?

8 MS. LECOCQ: Objection.

9 A. Again, to the criminal investigation  
10 context, I can't speak to that. But I think, also in  
11 the civil context, the term "harass" is pretty  
12 subjective, I mean, what that means. But I'm not  
13 aware of any individual cases, individual person,  
14 that we've raised this example, either in the  
15 litigation or any other type of public position on  
16 it.

17 Q. Has the Attorney General investigated  
18 whether anyone used the data that was posted on VRF's  
19 website for any of those purposes?

20 MS. LECOCQ: Objection.

21 A. So speaking just to this litigation --

22 Q. I wanted the criminal investigation.

23 MS. LECOCQ: Can you rephrase your  
24 question?

25 Q. Has the Attorney General conducted an

26 (Pages 98 to 101)

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1 Q. If we go to the next answer provided, it  
 2 says: "Answer: 'Publishing online,' could be  
 3 construed to mean anything from making an internal  
 4 list of registered voters for use in an internal  
 5 website, or secured website, or maintaining that  
 6 information on an internal website for others to  
 7 access internally, such as on Google Drive, or  
 8 sending mass emails to voters as part of a campaign.  
 9 The AG believes this type of 'publishing' used within  
 10 the context of permissible government or election  
 11 campaign use, is acceptable, whereas 'publishing' to  
 12 the general public is not." Did I read that correct?

13 **A. Yes.**

14 Q. Is that the position of the AG's Office as  
 15 we sit here today?

16 **A. I believe it is.**

17 Q. What's the difference between an internal  
 18 website and an external website?

19 **A. I think, again, that would be a**  
 20 **fact-specific analysis, right? What type of**  
 21 **protections? You know, it's not always black and**  
 22 **white. But I think, generally, that would be a**  
 23 **website that is not accessible except to people**  
 24 **within that entity. And, you know, an external site**  
 25 **would be something that was generally public, you**

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1 **know, generally available to the public.**

2 Q. Does it have to be password protected to be  
 3 an internal website?

4 **A. Again, it's a fact-based analysis. I think**  
 5 **that's just one factor that would have to be**  
 6 **considered to whether or not, you know, something is**  
 7 **publicly available and shared outside of an entity or**  
 8 **not.**

9 Q. And I'm sure you can appreciate that I'm  
 10 trying to figure out the terms that your office used,  
 11 and just reaffirm here is your position, actually  
 12 means, because, you're right, internal to me doesn't  
 13 really have a meaning without knowing what your  
 14 office's position on what "internal" means.

15 So, again, I'm just going to ask: Is it  
 16 your office's position that a -- let's say a website  
 17 that requires someone have a user name and password,  
 18 is that an internal website or external website?

19 **A. It depends on who is using it.**

20 Q. Okay. The people using it are people that  
 21 signed up for a user name and password?

22 **A. I mean, that could be limitless people that**  
 23 **are outside of the entity, with no control over their**  
 24 **use, or it could be, you know, campaign**  
 25 **representatives or a contractor who has been**

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1 **contracted to coordinate mailings, right, and has**  
 2 **that close agency relationship or contractor**  
 3 **relationship. So, again, I don't think you can just**  
 4 **use one example and say definitively this applies to**  
 5 **any type of situation.**

6 Q. You seem to be getting back to the idea of,  
 7 you know, internal and external to the organization  
 8 as kind of all encompassing for what publishing is  
 9 and is not allowed. And I'm trying to understand if  
 10 the internal, external, you know, analysis is one  
 11 factor, and this general, public, unsecure website,  
 12 internal/external website, is a different factor. If  
 13 those are really the same thing, and the means of  
 14 keeping the data within the entity is to have a  
 15 password protected website for that entity's members.

16 **So my question is: If VoteRef's website**  
 17 **was secured so that only people that want to**  
 18 **volunteer to further VoteRef's mission can sign up**  
 19 **for user name and password access to data, is that**  
 20 **permissible?**

21 **A. Again, it would have to depend on the**  
 22 **circumstances and the control of that data, and if**  
 23 **that even falls within the permitted uses.**

24 Q. Let's assume here that it is being used by  
 25 the end user for a permitted purpose. Does the fact

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1 that the website requires a user name and password  
 2 mean that it's lawful to use it in that manner?

3 MS. LECOCQ: Objection.

4 **A. Yeah, because I can't draw a conclusion**  
 5 **without knowing all of the facts, because I think the**  
 6 **facts of who has access and what controls are still**  
 7 **available, and assurances that there is that**  
 8 **connection with the organization; it's not just**  
 9 **anyone, right? And that there is not a risk of that**  
 10 **information being used for unlawful purposes. So I**  
 11 **think all of that would be very -- you know, would**  
 12 **require a thorough review of the circumstances and**  
 13 **the facts and the scope of the use and the scope of**  
 14 **the individuals with access.**

15 Q. Can anyone volunteer to do work for a  
 16 campaign?

17 **A. I don't think I could just go and volunteer**  
 18 **for a campaign and they would give me access to this**  
 19 **type of information, if that's what you're asking.**

20 Q. That wasn't my question, but I appreciate  
 21 that answer.

22 You seem to draw a distinction between  
 23 whether VoteRef is just providing data under this set  
 24 of facts to anyone. But what's the difference  
 25 between someone saying: I want to volunteer for a

33 (Pages 126 to 129)



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1 campaign to use it for campaign purposes, and I want  
2 to volunteer to help VoteRef use it for a purpose  
3 which, for the sake of this question, we're presuming  
4 is permissible?

5 MS. LECOCQ: Objection.

6 **A. I think that type of use, there are clear**  
7 **distinctions. And a volunteer -- campaigns don't**  
8 **just let anyone volunteering for the campaign get**  
9 **access to all of that information. It's maintained,**  
10 **and you know, they can't then -- there is no**  
11 **protections -- or there would be protections,**  
12 **arguably, for that information only to be used for**  
13 **that limited purpose. And it's within that nebulous**  
14 **of the campaign. Campaigns don't post this**  
15 **information on their website and say: Anybody that**  
16 **wants to volunteer, here's all of this information,**  
17 **and you can go use it however you see fit. And we**  
18 **don't have examples of that that I'm aware of**  
19 **happening, like VoteRef is doing in this case.**

20 **Q. What if VoteRef was selling the data to**  
21 **third parties who agreed by contract that they would**  
22 **only use it for permissible purposes?**

23 MS. LECOCQ: Objection.

24 **A. Yeah, again, I can't speculate to a**  
25 **conclusion. I mean, that's just not relevant to the**

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1 **facts in this case. But I'd have to look more**  
2 **closely at the statute and the rules, and what**  
3 **amounts to an agreement with the Secretary of State's**  
4 **Office, and the use for this data, and whether or not**  
5 **that type of use, you know, subsequent sale or**  
6 **distribution is authorized. I think it clearly would**  
7 **go against the statutes, arguably the statutory and**  
8 **legislative intent of ensuring that the Secretary of**  
9 **State's Office is the one that maintains control and**  
10 **protection over this information. And just by**  
11 **allowing it to be disseminated, without these**  
12 **requests to the Secretary of State's Office,**  
13 **following this process that's provided in law,**  
14 **would -- you know, it certainly violates the intent**  
15 **as well as the process -- the intent of the law and**  
16 **the process set up by the Secretary of State.**

17 Q. Can VRF share the data that it has in its  
18 possession with its own employees?

19 MS. LECOCQ: Objection.

20 **A. That would first depend upon whether or not**  
21 **the use is permitted, right, by law. Our contention**  
22 **is that it still is not. And it would depend upon**  
23 **what mechanisms there are to control, right? Just**  
24 **like a campaign that started sharing this information**  
25 **broadly -- I mean, the same questions would be**

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1 **raised. What type of control mechanisms are there?**  
2 **And who, knowingly or not, allowed this information,**  
3 **which is protected, to be used for unlawful purposes?**  
4 **So I think it would be a very fact-specific analysis.**

5 Q. So I understand you as saying that the  
6 legality of the transfer of the data, at least in  
7 part, hinges on how the data is going to be used by  
8 the recipient. Am I correct in saying that?

9 **A. Yeah.**

10 Q. If a citizen contacts VRF and says: Hey, I  
11 looked at your website. My data is incorrect. And  
12 VRF informs, let say the relevant county clerk, that  
13 the data is incorrect. Has VRF violated the law by  
14 pointing out that the inaccuracy to the county clerk?

15 MS. LECOCQ: Objection.

16 **A. Yeah, I can't get into hypotheticals. One,**  
17 **I mean, this isn't any type of determination that the**  
18 **Secretary of State's Office or our office has made.**  
19 **And, you know, I can't speak to a legal conclusion.**  
20 **I mean, that's going to be something that's argued in**  
21 **the pleadings in this case.**

22 Q. But do you understand that the allegation  
23 that VRF has made in this case is that that is  
24 precisely why they have this website, is to identify  
25 discrepancies and communicate those discrepancies, or

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1 errors or whatever you want to call them, to the  
2 relevant officials so they can be remedied?

3 **A. I understand that's the argument being**  
4 **raised, yeah.**

5 Q. Okay. If we assume the truth of that  
6 argument, if that is actually how the data is being  
7 used, is that permissible under 1-4-5.5?

8 MS. LECOCQ: Objection.

9 **A. Yeah, I mean, again, I think that this is**  
10 **addressed in our arguments in the case and the**  
11 **position taken by the Secretary of State as the**  
12 **decision-maker in denying this information or this**  
13 **data. But, yeah, I think that that is for unlawful**  
14 **purposes.**

15 Q. Okay. I put a binder of transcripts in  
16 front of you, and I put one in front of your counsel  
17 as well. If we can turn to that binder.

18 MR. MUELLER: I don't know -- I mean, these  
19 are all in the record. We can label this as an  
20 exhibit if we want. If you want to deal with a copy  
21 of it, you can.

22 MS. LECOCQ: I don't think it's necessary.

23 MR. MUELLER: I don't think so either.

24 Q. Okay. Let's start with the very first  
25 transcript. This is from the May 17, 2022 hearing on

34 (Pages 130 to 133)

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1 "The basis for the Attorney General's assertion that  
2 VRF, or anyone acting in concert with it, violated  
3 New Mexico law or may have violated New Mexico law."

4 Okay. I want to move on to the second  
5 transcript. That's the 6/15/22. This is a  
6 continuation of the preliminary injunction hearing.  
7 Looking at page 225, line 20. Let me know when  
8 you're there.

9 **A. Yeah, I've read it.**

10 Q. I'm going to read, starting at page 225,  
11 line 20. And I will first represent that if you go  
12 back to page 223, this is Ms. Serafimova speaking.  
13 "Now, on a substantive challenge, again, we do --  
14 given our interpretation of 5.5, we do concede that  
15 plaintiffs have not violated any of the use  
16 restrictions, because those use restrictions do not  
17 prohibit uploading the data to a website. That is  
18 under 5.36. So that doesn't change our theory."

19 Did I read that correctly?

20 **A. Yes.**

21 Q. Was that the Attorney General's position at  
22 the time of this hearing?

23 MS. LECOCQ: Objection.

24 **A. Again, you know, I was not -- it was a  
25 different administration, and this individual is no**

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1 **complicated question, given both the criminal and  
2 civil angles from this. But I mean, generally, the  
3 positions are: The actions taken, and the use of  
4 this information is not in compliance with New Mexico  
5 law. I mean, individual legal arguments, you know, I  
6 think that's separate. But generally, yeah.**

7 Q. Okay. Then, I'm going to ask you to look  
8 at 1-4-5.6 and 1-5-22 as we sit here now. We've  
9 already looked at these and confirmed the language,  
10 so I'm not going to belabor that. Is it the Attorney  
11 General's position, as we sit here today, that  
12 1-4-5.6 incorporates the prohibitions of 1-5-22(a) to  
13 make Voter Reference Foundation's publication of data  
14 unlawful?

15 MS. LECOCQ: Objection.

16 **A. I can't draw that conclusion.**

17 Q. Are you aware if that's a position that's  
18 been taken in this case, let's say, since the filing  
19 of the first amended complaint?

20 **A. I'm aware of competing arguments regarding  
21 the applicability of the criminal penalties and  
22 competing arguments about what applies and what  
23 doesn't. But I can't recall right now where we're  
24 currently at with this argument.**

25 Q. What do you mean "competing arguments"?

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1 **longer employed by our office. I presume there is no  
2 reason that I have, that I'm aware of to, you know,  
3 challenge any positions that she took.**

4 Q. Is the Attorney General's Office willing to  
5 state, at least prior to the filing of the first  
6 amended complaint, that the representation made by  
7 counsel for the Attorney General accurately reflect  
8 the positions of the Attorney General's Office?

9 **A. I couldn't answer that without consulting  
10 with counsel.**

11 Q. So you're not willing to state whether  
12 these are accurate representations of the Attorney  
13 General's position?

14 MS. LECOCQ: Objection. I think -- if it  
15 helps, I think we can stipulate that this was the  
16 reflection of the Attorney General Hector Balderas at  
17 the time that this was done, yes.

18 Q. Has the Attorney General's position on this  
19 case changed since the new Attorney General took  
20 over?

21 **A. What do you mean by "position"?**

22 Q. Position on whether VRF has engaged in  
23 unlawful activity.

24 MS. LECOCQ: Objection.

25 **A. Yeah, I mean, I think that that's a**

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1 You mean between plaintiff and defendants --

2 **A. Yeah.**

3 Q. -- or internally?

4 **A. Plaintiffs and defendants.**

5 Q. Are you aware that VRF has made requests  
6 for voter data to the Secretary of State, let's say,  
7 since it acquired the data from Local Labs?

8 **A. Yes.**

9 Q. Are you aware that all those requests have  
10 been denied?

11 **A. Yes.**

12 Q. I think we are moving into our next  
13 confidentiality segment here, just a warning there.  
14 Not there quite yet, but these questions might bleed  
15 over pretty quickly.

16 (Exhibit 11 marked.)

17 Q. Handing you what I've marked as Exhibit 11.  
18 Have you seen this document before?

19 **A. I don't -- it looks familiar. It may have  
20 been in one of the many hundreds of pages of  
21 documents that I reviewed that included some email  
22 correspondence. But I can't say definitively. I  
23 think that this was in there.**

24 Q. Okay. I'm just going to read from the  
25 first line here. It says, "Per Dylan's contact with

37 (Pages 142 to 145)



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1 **A. I mean, that's stated in this letter, so**  
2 **yes.**  
3 Q. Okay. The second to the last paragraph,  
4 "To further clarify another point, you have not  
5 complied with NMSA 1978 Section 1-4-5.5 in requesting  
6 voter data, by not submitting the required  
7 affidavit."  
8 Did I read that correctly?  
9 **A. Yes.**  
10 Q. So you would agree with me that this  
11 request was denied, at least in part, because no  
12 affidavit was provided?  
13 **A. Yeah, that's what it says.**  
14 **(Exhibit 13 marked.)**  
15 Q. I'm handing to you what we've marked as  
16 Exhibit 13. Have you seen this document before?  
17 **A. It also looks familiar. Everything is**  
18 **starting to blur together a little bit, but it looks**  
19 **like one of the documents that was included in the**  
20 **documents I've reviewed for this deposition.**  
21 Q. Okay. Can you tell me what this document  
22 is?  
23 **A. It is a letter from your law firm to the**  
24 **Secretary of State.**  
25 Q. Would you agree with me -- well, let me

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1 read the subject line. It says, "Notice of Violation  
2 of National Voter Registration Act and Request for  
3 Records." Did I read that correctly?  
4 **A. Yes.**  
5 Q. Would you agree with me that this, at least  
6 on its face -- you can characterize it how you  
7 want -- but that this characterizes itself as a  
8 request for voter records under the National Voter  
9 Registration Act?  
10 **A. Yeah, I mean, that's the subject. It**  
11 **states that it's a notice of violation, or alleged**  
12 **violation, and also a request for records.**  
13 Q. Would you agree with me as well that this  
14 is a request for records under Section 1-4-5.5, New  
15 Mexico statute?  
16 **A. Yes.**  
17 Q. And it would perhaps help to point your  
18 attention to page 4 where it says, "Requests for  
19 records."  
20 **A. Yeah.**  
21 Q. I'd like to draw your attention to the  
22 second to the last paragraph on page 4. It says,  
23 VRF's intended election use comprises two distinct  
24 projects. For its first project, just as VRF  
25 publishes voter data for many other states, and as it

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1 recently published voter data in New Mexico, VRF  
2 intends to publish the requested information online  
3 for election related purposes, but it will only  
4 publish the personal information of voters online if  
5 VRF is granted relief in" -- and then it lists this  
6 case. And it says, "or in any other legal  
7 proceeding."  
8 Did I read that correctly?  
9 **A. Yes.**  
10 **Q. And so would you agree with me that VRF is**  
11 **representing, through counsel here, that it will not**  
12 **publish the personal information of voters online**  
13 **unless a court gives them relief saying they can do**  
14 **so?**  
15 **A. That's what it says.**  
16 Q. I'm going to continue on the last  
17 paragraph. "For its second project, VRF intends to  
18 analyze the records, information, and data provided  
19 in response to the above requests in order to engage  
20 in a discrepancy review of the New Mexico voter  
21 rolls. VRF intends to publish this analysis online  
22 without disclosing the personal information of any  
23 voter. VRF will comply with this  
24 non-public-disclosure promise for the data it uses on  
25 the second project regardless of whether it prevails

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1 in the federal litigation. And again, for the sake  
2 of clarity, no personal information of any voter will  
3 be published online unless VRF is granted relief in  
4 the federal litigation or in any other legal  
5 proceeding."  
6 Did I read that correctly?  
7 **A. Yes.**  
8 Q. And you'll agree that VRF, through counsel,  
9 is promising there that it will not publish voter  
10 data online absent a court order telling them they  
11 can do so?  
12 **A. That's what it says.**  
13 Q. Okay. If you look at page 5 of this,  
14 second paragraph, it says, "Signed voter information  
15 authorization forms for each of the above requests  
16 are attached to this letter as Exhibit B."  
17 Did I read that correctly?  
18 **A. I'm sorry, which page are you looking at?**  
19 Q. Page 5, second paragraph.  
20 **A. Okay.**  
21 Q. "Signed voter information authorization  
22 forms for each of the above requests are attached to  
23 this letter as Exhibit B."  
24 Did I read that correctly?  
25 **A. Yes.**

40 (Pages 154 to 157)

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1 Q. And if we flip -- it looks like maybe the  
2 Exhibit B label got cut off a little bit.

3 A. Yes.

4 Q. But you'll see two documents there. Can  
5 you tell me what those documents are?

6 A. They say, "Voter Information  
7 Authorization." It's a form from the Secretary of  
8 State.

9 Q. Okay. And what is this form used for?

10 A. I presume it's used for requesting voter  
11 data.

12 Q. And you'll agree with me -- if you look at  
13 the section on each of these, it says, "Information  
14 of Requester," it says, "Name, Gina Swobada, Voter  
15 Reference Foundation. Is that correct?

16 A. Yes.

17 Q. Just below that in the Authorization,  
18 you'll see that Gina Swobada has signed as the  
19 signature of the requester; is that correct?

20 A. Yes.

21 Q. Was VRF given voter data in response to  
22 that request?

23 A. I don't believe so.

24 Q. Do you have any reason to think that it  
25 was?

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1 A. No.

2 Q. Did the Attorney General advise the  
3 Secretary of State about whether or not to produce  
4 voter data in response to the May 27th request from  
5 counsel?

6 A. Well, I can't speak to advice. But my  
7 understanding is this is the third request for the --  
8 which is one of the three requests -- or this is one  
9 of the three requests -- subsequent requests -- that  
10 were denied, that our office was consulted on by the  
11 Secretary of State's Office.

12 MR. MUELLER: I think we're outside of the  
13 confidentiality. That's the last question.

14 (A discussion was held off the record.)  
15 (Exhibit 14 marked.)

16 Q. I'm handing you what we've marked as  
17 Exhibit 14. Would you look at that? When you've had  
18 a chance to review I'll ask if have you seen this  
19 document?

20 A. I believe I have.

21 Q. And can you tell me what this document is?

22 A. It's a letter in response to the request  
23 that we were just looking at from the Secretary of  
24 State's Office.

25 Q. Okay. And who is the author of this

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1 response?

2 A. Dylan Lange.

3 Q. Okay. I want to draw your attention to the  
4 last paragraph on page 2. It says, "With respect to  
5 item number 2 and the affidavit you submitted as  
6 required by New Mexico law, in the notice VRF states  
7 that it 'intends to publish the requested information  
8 online for election related purposes, but it will  
9 only publish the personal information of voters if  
10 VRF is granted relief in'" -- citing this case --  
11 "'or in any other legal proceeding.'"

12 Did I read that correctly?

13 A. Yes.

14 Q. Skipping the citation there, it says, "As  
15 you know from the federal litigation and otherwise,  
16 it is our position that publishing any" -- with  
17 emphasis on the "any" there -- New Mexico voter data  
18 on a website is a violation of the New Mexico  
19 Election Code that carries criminal liability."

20 Did I read that correctly?

21 A. Yes.

22 Q. At the time this response was sent, did the  
23 Attorney General's Office agree with that position?

24 A. I think that would reveal any privileged  
25 communication that we would have with the Secretary

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1 of State's Office.

2 Q. I'm not asking what advice you gave them.  
3 I'm asking, as a defendant and litigant in this case,  
4 if that is -- if that comports with the position that  
5 the Attorney General was taking?

6 A. Our position is that we support the  
7 Secretary of State's Office. And so, you know, had  
8 we disagreed, you know, I think you could infer that  
9 we were having disagreement with our client. So,  
10 yeah, I mean we certainly support the position taken  
11 by the Secretary of State's Office, and the decision  
12 that they made, in our role representing the state  
13 and that agency.

14 Q. We can agree that the Secretary effectively  
15 denied this request and did not produce voter data to  
16 Voter Reference Foundation; is that correct?

17 A. Yes.

18 Q. Okay. I want to compare the denial of the  
19 October 18th request, that we just looked at, with  
20 the November 17th letter, to the denial here.

21 So we established that in Mr. Lange's  
22 November 17, 2022 letter, two of the reasons for  
23 which that request was denied -- we'll start with the  
24 first one -- it says, "You have not indicated that  
25 you will not post any voter data online, and based on

41 (Pages 158 to 161)

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1 your past practice we believe you will do so again."  
 2 You already agreed that I read that  
 3 statement correctly, and that that was one of the  
 4 reasons for denying the request.  
 5 MS. LECOCQ: I'm sorry, which -- you said  
 6 the first one.  
 7 MR. MUELLER: I'm on page 2 of the November  
 8 17, 2022 letter from Dylan Lange.  
 9 MS. LECOCQ: Sorry. Got you. I'm so  
 10 sorry. Go ahead.  
 11 Q. So perhaps to clarify, in the November 17,  
 12 2022 letter, at least one of the reasons for the  
 13 denial of the request was that VoteRef did not  
 14 promise not to publish the voter data online; is that  
 15 correct?  
 16 **A. Yeah, that's one of the explanations.**  
 17 Q. And in the May 27th request, which was  
 18 subsequently denied on June 16, VoteRef specifically  
 19 stated that it was not going to publish the data  
 20 online without a court order allowing it to do so; is  
 21 that correct?  
 22 **A. Yeah, that's what it says.**  
 23 Q. Okay. Similarly, in the November 17, 2022  
 24 letter from Mr. Lang, on page 2, as we went over, one  
 25 of the reasons for denial was that VoteRef did not

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1 submit the required affidavit; is that correct?  
 2 **A. Yes.**  
 3 Q. And if we look at the May 27th request --  
 4 which was then denied on June 16, 2022 -- VoteRef  
 5 included two different affidavits, did it not?  
 6 **A. Yes.**  
 7 MR. MUELLER: I think we should go ahead  
 8 and take a break and then power through this last bit  
 9 here.  
 10 MS. LECOCQ: Okay.  
 11 (A discussion was held off the record.)  
 12 MR. MUELLER: I have one more topic I want  
 13 to knock out and then that may be it. I'll say a  
 14 caveat. I want to knock this out, maybe take another  
 15 short break, look through my stuff again, and then we  
 16 may be done. So I'm hoping 5:00 for all of our  
 17 sakes.  
 18 Q. Is the New Mexico Attorney General's Office  
 19 aware of any other entity that posts voter data  
 20 online?  
 21 **A. Not to my knowledge under similar fact**  
 22 **patterns that are here. You know, publicly post. I**  
 23 **mean --**  
 24 Q. Let's say specifically, is the Attorney  
 25 General's Office aware of any other entity that posts

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1 voter data online to the general public?  
 2 **A. No, not that I'm aware.**  
 3 Q. Is the Attorney General's Office aware of  
 4 any other entity who posts voter data online to  
 5 something less than the general public?  
 6 **A. Well, I guess I should also clarify what**  
 7 **type of voter data, right? I mean, the detail, the**  
 8 **home addresses, just simply names -- I mean, I think**  
 9 **it depends on the extent of the data being shared**  
 10 **also.**  
 11 Q. I mentioned this, but it was a long time  
 12 ago. When I'm saying voter data, I'm meaning  
 13 specifically the definition given to voter data in  
 14 1-4-5.5 C, which is -- I want to be clear what we're  
 15 talking about. So when I use the term "voter data,"  
 16 as I stated earlier, voter data, as defined in  
 17 1-4-5.5, Subsection E, paragraph 5. "Voter data  
 18 means selected information derived from the voter  
 19 file."  
 20 So with that clarification, does that  
 21 change your answer to the question: Is the AG's  
 22 Office aware of any entity that publishes voter data  
 23 online to the general public?  
 24 **A. Yeah, I mean, not generally, that I'm aware**  
 25 **of.**

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1 Q. Okay. Is the AG's Office aware of any  
 2 entity that posts voter data online to something less  
 3 than the general public?  
 4 **A. Yeah, not that I'm aware of, that I've been**  
 5 **privy to conversations about, no.**  
 6 Q. Is the Attorney General's Office aware of  
 7 any entity that sells voter data?  
 8 **A. Not that I'm aware of, no.**  
 9 Q. Does the Attorney General's Office have any  
 10 knowledge of an entity called Catalist?  
 11 MS. LECOCQ: Objection.  
 12 **A. Yeah, that name does not ring a bell to me.**  
 13 MR. MUELLER: I'm going to give Ms. Lecocq  
 14 a chance, in case she's --  
 15 MS. LECOCQ: Unless I have really  
 16 misinterpreted this, I don't believe -- this is not a  
 17 subject that I -- Catalist and what it did, or what  
 18 our knowledge is, I think is just the knowledge of  
 19 the Secretary of State. I don't believe that the  
 20 Attorney General's Office has any reason to know  
 21 about it. And I don't see it in the topics, unless  
 22 I'm misconstruing these topics.  
 23 MR. MUELLER: Well, I don't want to get  
 24 into too much argument on the record here. But  
 25 certainly, the treatment of VRF, as compared to

42 (Pages 162 to 165)

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1 different entities that use, share, and even sell  
 2 voter data, certainly relates to the claims in our  
 3 case, including viewpoint discrimination and the  
 4 defenses raised by the parties in this case, one of  
 5 which is on appeal, about how we must show disparate  
 6 treatments as to us and other entities. So I would  
 7 say that there is a category that says, you know,  
 8 claims and defenses raised in the litigation. I  
 9 think this calls for -- and it's been raised several  
 10 times throughout this case. I don't think I'm  
 11 surprising you by asking you about it here. I  
 12 believe it's also in a discovery response. So to the  
 13 extent we've asked for testimony about discovery  
 14 responses, then I think we're there.

15 MS. LECOCQ: Mr. Dworak has certainly  
 16 reviewed the discovery responses. Do you know which  
 17 one?

18 MR. MUELLER: I think as early as  
 19 Interrogatory 1.

20 Q. Interrogatory No. 1. Do we have a copy of  
 21 this? It says, "State whether you have conducted any  
 22 investigation or made any inquiry into the use or  
 23 sharing of voter data by Catalist, i360, or any other  
 24 commercial entity that has purchased voter data from  
 25 New Mexico" -- goes on.

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1 And then there is an answer from the  
 2 Attorney General's Office, which I don't want to read  
 3 out loud until I ask about it.

4 MS. LECOCQ: Sure. Let me just refresh his  
 5 recollection with this. Sorry, go ahead.

6 MR. MUELLER: Just to clarify, did he hand  
 7 you the supplemental responses or the original? Is  
 8 it the 3/8 or the 10/20? They're not different, but  
 9 it's just important.

10 MS. LECOCQ: This is response, so this is  
 11 the initial, not supplemental.

12 MR. MUELLER: I'll note that they're not  
 13 different. But I want to note that they're not  
 14 different.

15 MS. LECOCQ: That's fine.

16 Q. Okay. So going back to my question, has  
 17 the Attorney General ever investigated -- let me  
 18 backtrack there. Is the Attorney General aware of  
 19 whether Catalist sells voter data that it receives  
 20 from the Secretary of State's Office?

21 A. Not that I'm aware of.

22 Q. And is that the office or is that you  
 23 speaking individually?

24 A. That's me speaking on behalf of the office.

25 Q. What about i360? Is the Attorney General

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1 aware of whether or not i360 sells voter data that it  
 2 receives from the New Mexico Secretary of State's  
 3 Office?

4 A. No, not that I can recall that the office  
 5 generally is aware of any investigation or knowledge  
 6 of the details.

7 Q. Same question with regard to Aristotle. Is  
 8 the Attorney General aware that it sells voter data  
 9 that it receives from the New Mexico Secretary of  
 10 State?

11 A. The same answer, no.

12 Q. Has the Attorney General ever investigated  
 13 any entity, other than VRF, for how it uses voter  
 14 data requests from the Secretary of State?

15 MS. LECOCQ: Objection. Go ahead.

16 A. Yeah, I'm not aware of any referral that  
 17 would have resulted in any type of investigation of  
 18 that sort.

19 Q. Do you have a copy of the supplemental  
 20 interrogatories? And we can mark that as Exhibit 15.  
 21 (Exhibit 15 marked.)

22 Q. And I'll represent that this document --  
 23 thank you for marking that -- it is Defendant Raul  
 24 Torrez's First Supplemental Response to Plaintiff  
 25 Voter Reference Foundation's First Interrogatories,

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1 Requests for Production and Requests for Admission.  
 2 Do you agree with me that that is what this document  
 3 is?

4 A. Yes.

5 Q. And if you'd look at -- if you look at the  
 6 very last page, the certificate of service, do you  
 7 agree with me that these were served on -- or  
 8 produced to Voter Reference Foundation on March 8,  
 9 2023?

10 A. Yes.

11 Q. Directing your attention to Interrogatory  
 12 No. 1 -- that's on page 4 -- Interrogatory No. 1  
 13 says, "State whether you have conducted any  
 14 investigation or made any inquiry into the use or  
 15 sharing of voter data by Catalist, i360, or any other  
 16 commercial entity that has purchased voter data from  
 17 New Mexico."

18 Did I read that correctly?

19 A. Did you say Interrogatory No. 4 or 1?

20 Q. I said 1 on page 4.

21 A. Yes, that's correct.

22 Q. And then it says -- well, it says, "If  
 23 answered" -- skip that part. You'll note that there  
 24 is two objections made, but then a response is given  
 25 subject to that objection. Am I characterizing that

43 (Pages 166 to 169)

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1 correctly?

2 **A. Yes.**

3 Q. And that response says, "Without waiving,  
4 and subject to, the foregoing general and specific  
5 objections, defendant has not received a referral  
6 from a state or county elections agency or a citizen  
7 complaint concerning the above-referenced entities.  
8 that defendant has not conducted an investigation or  
9 inquiry into the above-referenced entities does not  
10 preclude defendant from doing so."

11 Did I read that correctly?

12 **A. Yes.**

13 Q. You'll agree with me that this is a  
14 supplemental response that, as we noted, was served  
15 last week?

16 **A. Yes.**

17 Q. And I'll represent to you that the initial  
18 response to this interrogatory was served on October  
19 20, 2022. Would you agree with me that the response  
20 has not changed from October 20, 2022 to March 8,  
21 2023? And perhaps it would be helpful -- I want to  
22 find it to show you. On the requests that were  
23 supplemented on March 8, it's noted that there is a  
24 supplemental response.

25 So taking a step back, can we agree that

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1 of those three entities to the attention of the

2 Attorney General?

3 **A. Not that I'm aware of. Although,**  
4 **they're -- yeah, not that I'm aware of. I mean --**  
5 **and that's what our answer says, is that we haven't**  
6 **had any referrals or complaints provided to our**  
7 **office. So I think that's consistent with that**  
8 **answer.**

9 Q. What would it take Voter Reference  
10 Foundation giving the AG about these entities for the  
11 AG to be concerned that they are selling voter data?

12 MS. LECOCQ: Objection.

13 **A. Again, I think a lot of that is very fact**  
14 **specific. And what complicates this is the ongoing**  
15 **litigation. Defenses raised in litigation are**  
16 **treated a little bit differently, obviously, than a**  
17 **complaint filed or referral from another state agency**  
18 **or a complaint filed by a member of the public or any**  
19 **entity through our complaint process. So, I mean --**  
20 **and that's how many complaints come through our**  
21 **office. They come through, you know, either a form**  
22 **filled out on our website or by referral from another**  
23 **government entity.**

24 **(Exhibit 16 marked.)**

25 Q. I'm going to hand you what I've marked

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1 there is no supplemental response provided to  
2 Interrogatory No. 1?

3 **A. That's correct.**

4 Q. So the Attorney General's response to that  
5 was the same on October 20, 2022 and March 8, 2023?

6 **A. Yes.**

7 Q. Are you aware that these entities were  
8 specifically identified to the Secretary of State,  
9 the Attorney General, and the Court at the  
10 preliminary injunction hearings held last summer?

11 **A. I'm generally aware that -- I mean,**  
12 **throughout this -- that they've been mentioned, and**  
13 **these questions have been asked.**

14 Q. Does the Attorney General's Office consider  
15 VRF's identification of those entities to be a  
16 citizen complaint?

17 MS. LECOCQ: Objection.

18 **A. Yeah, I think that would -- what**  
19 **constitutes a citizen's complaint, and what happens**  
20 **from complaints or information received to us -- and**  
21 **we generally know that just raising an allegation or**  
22 **issue in an ongoing case or pleading would not**  
23 **generally constitute any type of formal complaint**  
24 **with our office.**

25 Q. Has the Secretary of State ever brought any

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1 as -- pretty poorly -- as Exhibit 16. Once you've  
2 had a chance to review it, can you tell me if you've  
3 seen this document before?

4 **A. No, I don't believe I've ever seen this.**

5 Q. Just on its face, can you tell me what this  
6 document purports to be?

7 **A. I mean, having never seen it before, it's a**  
8 **little hard for me to do that. But it just says it's**  
9 **a "Declaration of Records Custodian of Aristotle**  
10 **International, Inc.," and there are a number of --**  
11 **looks like screen shots or -- yeah, screen shots --**  
12 **from some websites.**

13 Q. And if we look at the second page of the  
14 declaration, will you agree with me that it is signed  
15 by a J. Blair Richardson, Jr., who at least purports  
16 to be general counsel for this entity?

17 **A. Yeah, that's what it says.**

18 Q. Okay. I want to draw your attention to  
19 attachment number 2. On page 1, it identifies  
20 attachment 2 as, "Aristotle's Test  
21 Voterlistsonline.com sales order and agreement used  
22 for Aristotle customers wishing to purchase access to  
23 New Mexico voter data."

24 Did I read that description on page 1  
25 correctly?

44 (Pages 170 to 173)



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1 **A. Yes.**

2 Q. So if we turn to attachment 2 --

3 MR. MUELLER: And I am going to note that  
4 this part should be designated "Confidential"  
5 pursuant to the confidentiality order, protective  
6 order.

7 Q. Have you been able to find attachment 2?

8 **A. Yes.**

9 Q. And you'll agree with me at the top it  
10 says, "Aristotle Now You Know," identifies their  
11 contact information, and then says, "Aristotle Sales  
12 Order and agreement"?

13 **A. Yes.**

14 Q. If you look down under the kind of darkened  
15 bar, you'll see it says, "Voterlistsonline.com  
16 Access; quantity, 1; unit, months; sales price,  
17 \$1,000." Did I read that correctly?

18 **A. Yes.**

19 Q. If you go down under Product Details &  
20 State Data Restrictions, it reads,  
21 "Voterlistsonline.com Access." Then it says,  
22 "Voterlistsonline.com Access" again. "Aristotle will  
23 provide client with open access to the specific areas  
24 listed using Aristotle's Voterlistsonline.com service  
25 for the period listed below. Client will have access

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1 to all available updates obtained by Aristotle during  
2 the term of this contract."

3 Did I read that correctly?

4 **A. Yes.**

5 Q. It goes on to say, "This contract includes  
6 access and ability to download files containing all  
7 standard fields available on Voterlistsonline.com for  
8 those geographic areas included within this  
9 contract."

10 Did I read that correctly?

11 **A. Yes.**

12 Q. Then, if you skip the next paragraph, it  
13 then says, "Client will have access to NM statewide  
14 file."

15 Did I read that correctly?

16 **A. Yes.**

17 Q. Okay. If you go down a little further, it  
18 says, "New Mexico: (Political Use Only)."

19 Do you see where I'm at, at the bottom of  
20 the page?

21 **A. Yes.**

22 Q. "The following apply to the extent required  
23 by applicable law. Section 1-4-5.5 of the New Mexico  
24 Election Code: I hereby swear that New Mexico voter  
25 data, mailing labels and special voter lists shall be

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1 used for governmental, election and election campaign  
2 purposes only, and shall not be made available or  
3 used for commercial or unlawful purposes."

4 Did I read that correctly?

5 **A. Yeah.**

6 Q. Would you agree with me that this contract  
7 purports to be a contract selling access to New  
8 Mexico voter data?

9 MS. LECOCQ: Objection.

10 **A. Yeah, I mean, I can't -- I don't know**  
11 **anything about this, the validity of this, where it**  
12 **came from. I mean, it purports that. But I've never**  
13 **seen this before.**

14 Q. Sure. But we can at least agree that it  
15 says, "Client will have access to New Mexico  
16 statewide file," and it lists a sales price of  
17 \$1,000? We can agree to both of those things?

18 **A. Yeah.**

19 Q. Does this raise any concern with the  
20 Attorney General that an entity is selling New Mexico  
21 voter data?

22 MS. LECOCQ: Objection.

23 **A. Without knowing the context of this, the**  
24 **timing, what conditions are placed on it, whether or**  
25 **not they have New Mexico data, how much is being**

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1 **used, who it's being used by, all of those**  
2 **fact-specific questions, I could not say that our**  
3 **office has a concern.**  
4 **I certainly have -- we would have**  
5 **questions. And also, importantly, the Secretary of**  
6 **State's Office, who understands this area of law, is**  
7 **charged with, you know, overseeing the use of**  
8 **election data, I would certainly want to know what**  
9 **they think about it.**

10 Q. Does the disclaimer that we read at the  
11 bottom of -- disclaimer is my own word -- the  
12 paragraph that we read at the bottom of this document  
13 about "political use only" in referring to 1-4-5.5,  
14 make Aristotle's sale of this data lawful?

15 MS. LECOCQ: Objection.

16 **A. Yeah, I mean, I can't draw a conclusion on**  
17 **whether or not this is lawful or not without, again,**  
18 **addressing the number of questions that I had, and**  
19 **points from the prior question. I mean, I can't say**  
20 **that putting some text, and having somebody check a**  
21 **box, by itself, is sufficient to absolve any legal**  
22 **issues that might be raised.**

23 Q. We talked earlier about control of the  
24 data. If this contract is legally binding, does this  
25 adequately -- does Aristotle adequately maintain

45 (Pages 174 to 177)

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1 control of the data by entering into a binding  
 2 contract with the person to whom it sells the data to  
 3 only use it for permissible purposes?  
 4 MS. LECOCQ: Objection.  
 5 **A. Yeah, I mean, I can't speculate, having**  
 6 **never seen any of this before. And it, you know, not**  
 7 **being presented in part of any of the analysis that**  
 8 **we've done, opine from our office on whether or not**  
 9 **this contract would permit an entity from sharing or**  
 10 **selling such data under our state laws.**  
 11 Q. Does the purpose for which the buyer of  
 12 this voter data puts the voter data, once they  
 13 receive it, affect the analysis of whether Aristotle  
 14 is violating New Mexico law?  
 15 MS. LECOCQ: Objection.  
 16 **A. Again, I can't speculate as to liability on**  
 17 **such a hypothetical, without having reviewed it**  
 18 **first. It certainly raises a lot of questions that**  
 19 **we'd have to review closely.**  
 20 Q. I mean, I suppose we're looking at a  
 21 document here, where this entity is selling New  
 22 Mexico voter data. So, again, I'm not sure this is a  
 23 hypothetical. This is -- we're looking at a document  
 24 and this is what is happening.  
 25 So I'm just simply asking: Does the

Page 179

1 purpose towards which the buyer puts the data affect  
 2 whether Aristotle is lawfully selling the data?  
 3 MS. LECOCQ: Objection.  
 4 **A. Again, I could answer this if this was**  
 5 **something that we were aware of before in our office.**  
 6 **But I can't, you know, on the spot give positions**  
 7 **that our office would take, or opinions our office**  
 8 **would have, on something our office has never seen**  
 9 **before. And obviously, there is more to whatever**  
 10 **this is than a piece of paper or a website. And,**  
 11 **yeah, it's just not possible for me to opine.**  
 12 **Q. Is being presented with this document a**  
 13 **sufficient motivator for the Attorney General to look**  
 14 **into Aristotle or any of these other entities?**  
 15 **MS. LECOCQ: Objection.**  
 16 **A. I can say that the Attorney General's**  
 17 **Office takes its responsibility in upholding state**  
 18 **law seriously. And actions that we may take, you**  
 19 **know, are dependent upon what information that we**  
 20 **have. And with something like this, where there is**  
 21 **another state agency implicated, it necessarily needs**  
 22 **to involve them.**  
 23 **So I could say generally that it's**  
 24 **something that the office takes note of, and is**  
 25 **mindful of, and we'll certainly consider moving**

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1 **forward in conversations that we have with the other**  
 2 **state agency.**  
 3 Q. Is the Attorney General's Office less  
 4 concerned by the sale of voter data by these  
 5 commercial entities than it is by what VoteRef was  
 6 doing with the data?  
 7 MS. LECOCQ: Objection.  
 8 **A. Yeah, it's impossible to state any opinion**  
 9 **that our office would have, not having any of this**  
 10 **information prior to today. So I can't opine on**  
 11 **that.**  
 12 **But, again, certainly the Secretary of**  
 13 **State's Office would need to be engaged in**  
 14 **understanding this issue and exploring the issue, and**  
 15 **determining what steps they may take, with or without**  
 16 **our office.**  
 17 Q. Did the Attorney General's Office know who  
 18 Aristotle was before today?  
 19 MS. LECOCQ: Objection.  
 20 **A. So, having refreshed my memory, these**  
 21 **entities were mentioned in discovery. So, I mean, at**  
 22 **least that knowledge. I'm not aware of any -- you**  
 23 **know, as I stated before, there is nothing formal, no**  
 24 **formal complaints, or any of that action. But**  
 25 **certainly our knowledge, just by reference to these**

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1 **entity's names.**  
 2 Q. Has the Attorney General's Office had any  
 3 contact with Aristotle, let's say, in the last two  
 4 years?  
 5 **A. Not that I'm aware of. And, you know, that**  
 6 **wasn't part of any review or research I did in**  
 7 **preparation for today.**  
 8 **(Exhibit 17 marked.)**  
 9 Q. I'm handing you what's been marked as  
 10 Exhibit 17. Have you seen this document or some  
 11 iteration of this document before?  
 12 **A. Yes.**  
 13 Q. And what is this?  
 14 **A. This is a draft of House Bill 4, introduced**  
 15 **during this legislative session, 2023.**  
 16 Q. Has the Attorney General's Office -- I  
 17 don't want privileged information here -- but has the  
 18 Attorney General's Office been involved in drafting  
 19 this proposed amendment?  
 20 **A. Not that I'm aware of, no.**  
 21 Q. Did the Attorney General's Office make any  
 22 suggestions regarding the proposed amendments to  
 23 Sections 1-4-5.5 and 1-4-5.6?  
 24 **A. Not other than our normal process of**  
 25 **providing fiscal impact reports through the**

46 (Pages 178 to 181)



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1 legislative session, which we do -- at this count  
2 it's about 560 different bills. So this is one of  
3 560 that have come into our office in the past 51  
4 days.

5 Q. Does the Attorney General's Office have an  
6 understanding of what House Bill 4 proposes to change  
7 with regard to -- let's say specifically Sections  
8 1-4-5.5 and 5.6?

9 A. I'm sorry, can you ask that question again?

10 Q. Sure. Does the Attorney General's Office  
11 have an understanding of what this bill proposes with  
12 regard to 5.5 and 5.6?

13 A. So the office, generally -- the volume --  
14 and I have to put context into this, because it  
15 affects the way I answer and explain -- answer your  
16 question and explain bill analyses -- our office --  
17 right now, I'm overseeing the bill analysis for our  
18 office, which includes requests from the Legislative  
19 Finance Committee analysts -- which there is a number  
20 of them, and they request fiscal impact reports --  
21 which aren't just fiscal impact -- it's also any  
22 types of issues. And they ask them often of many  
23 agencies for every bill, amendments, and  
24 substitutions. Not all, but many. My estimate is  
25 that we get about 75 percent of the bills introduced

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1 with a request for a fiscal impact report to our  
2 office.

3 And so, by the time we receive a request,  
4 we have 24 hours, generally, to return the fiscal  
5 impact. They're assigned to, I think, about 40  
6 attorneys throughout the office, based off of some  
7 subject matter, experience; sometimes, it's  
8 completely random, too. And the attorney then has 18  
9 hours to complete the analysis, submit it. And it  
10 usually goes through one, sometimes two, reviews  
11 before being released back to the Legislative Finance  
12 Committee.

13 So our office being aware of a bill, these  
14 attorneys and someone who reviews it will generally  
15 be aware of it. But the time constraints on our  
16 office's ability, you know, to get into the weeds on  
17 bills, there aren't many that I can say the office,  
18 as an entity, is familiar with. Some attorneys that  
19 do the fiscal impact reports are aware of it.

20 But, can I say that the Attorney General,  
21 or even the executive team, understands all the  
22 details of every single bill? No, they don't. It's  
23 not possible, literally possible, for that to happen,  
24 given that we receive over 100 of these a week, on  
25 top of everyone's normal workload.

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1 I know that's a long answer. I hope that  
2 helps put it in context.

3 Q. Does the Attorney General's Office support  
4 the proposed amendments to 5.5 and 5.6?

5 MS. LECOCQ: If you want to declare -- I  
6 don't know if you want me to show him where they are  
7 in this bill? Because it's a huge bill.

8 MR. MUELLER: I mean, we're on page 4 and 5  
9 of this document.

10 MS. LECOCQ: Okay.

11 Q. Page 4 starts with 1-4-5.5.

12 A. Excuse me, what page is it?

13 Q. Page 4.

14 A. Page 4. Would you like me to answer the  
15 question?

16 Q. Yes.

17 A. So I'm not aware of our office taking a  
18 formal position publicly in support of this. I can  
19 say, generally, this helps address the issue, and  
20 we'd be supportive of, because it helps clarify --  
21 just like dozens of other bills in the session, they  
22 help to clarify terms that are not always clear; they  
23 might be ambiguous and conflicting.

24 Q. Does the Attorney General have any  
25 understanding as to whether these proposed amendments

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1 were motivated, in whole or in part, by VRF's  
2 lawsuit?

3 A. I'm not aware of that. That might be a  
4 better question for the Secretary of State, because  
5 they're the subject matter expert in these statutes  
6 that are being amended.

7 Q. Okay. If we look at the proposed amendment  
8 to 5.5 C -- which is the second to the last paragraph  
9 on page 4 -- I'm just going to read through this and  
10 annotate as I go. So C says, "Each requester of  
11 voter data, mailing labels or special voter lists  
12 shall sign an affidavit that the voter data, mailing  
13 lists, or special voter lists shall sign an affidavit  
14 that the voter data, mailing lists shall be used for  
15 governmental or" -- and then this amendment proposes  
16 to remove "election and." The original has "election  
17 campaign purposes only." This amendment would add,  
18 "shall not be transferred, copied, shared or conveyed  
19 to any person outside the requesting party's agency  
20 or organization, shall not be made accessible by the  
21 general public on the internet or through other  
22 means." And then the original has "and shall not be  
23 made available for use for unlawful purposes."

24 Did I fairly characterize that?

25 A. Yes.

47 (Pages 182 to 185)

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1 Q. If New Mexico law already prohibits posting  
2 voter data on the internet, why is this amendment  
3 necessary?  
4 MS. LECOCQ: Objection.  
5 **A. Yeah, I can't speak to the intent of the**  
6 **sponsors, the legislators. That would be a question**  
7 **for a member of the legislature.**  
8 **But I will just say -- and I mentioned this**  
9 **before -- that there are many statutes that need**  
10 **housekeeping. And some of that -- you know, terms**  
11 **that are insistent, terms that are duplicative, terms**  
12 **that aren't defined. And I see this as addressing an**  
13 **issue that -- you know, obviously we're arguing over**  
14 **these terms, and this would clarify, to help avoid**  
15 **that ambiguity, and better clarify the requirements**  
16 **of the statute.**  
17 Q. Okay. I want to then turn your  
18 attention -- if you look at the bottom of page 5, it  
19 begins the amendments to Section 1-4-5.6.  
20 And in the definition of "Unlawful use of  
21 voter data, mailing labels, or special voter lists,  
22 consists of -- this is Subsection A -- it says, "the  
23 knowing and willful." The amendment purports to  
24 strike the words "use of such information for  
25 purposes prohibited by the Voter Records System Act,"

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1 and to add: "Selling, loaning, providing access to  
2 or otherwise surrendering of voter data, mailing  
3 labels or special voter lists by a person for  
4 purposes prohibited by the Election Code."  
5 Did I fairly characterize that section?  
6 **A. Yes.**  
7 Q. Does that language that this would add on  
8 lines 2 to 4 of page 6 sound familiar to you?  
9 MS. LECOCQ: Objection.  
10 **A. I mean, have I read that word for word? I**  
11 **can't -- I don't know if I have or not. I mean, some**  
12 **of those points I know we're addressing here.**  
13 Q. I think you have a copy of 1-5-22 in front  
14 of you, if you need to refresh your recollection on  
15 this. But I'll ask: Is that the same language  
16 that's currently in Section 1-5-22?  
17 **A. I'll say yes.**  
18 Q. I'm going to move -- sorry, if you want a  
19 chance to --  
20 **A. No, no, that's fine, go ahead.**  
21 Q. I just want to move to line 6 on page 6.  
22 There is a (2) in parentheses that says -- this is an  
23 addition from the amendment, "causing voter data,  
24 mailing labels or special voter lists or any part of  
25 the voter data, mailing labels or special lists that

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1 identifies, or that could be used to identify, a  
2 specific voter or the voter's name, mailing or  
3 residential address to be made publicly available on  
4 the internet or through other means."  
5 Did I read that section correctly?  
6 **A. Yes.**  
7 Q. Does the Attorney General agree that  
8 violations of these provisions both, as they are  
9 currently written, and as would be amended, are  
10 crimes under New Mexico law?  
11 MS. LECOCQ: Objection.  
12 **A. I mean, our office hasn't taken a position**  
13 **on these proposed -- that I'm -- the fiscal impact**  
14 **reports they include a note that they're not formal**  
15 **positions of our office. But, I mean, these are in**  
16 **the same section as, you know, describing the fourth**  
17 **degree felonies. So I think that can be presumed.**  
18 **But our office hasn't taken any kind of formal**  
19 **position on it.**  
20 Q. You'll agree with me that lines 12 through  
21 17 do say that the unlawful use of voter data is a  
22 fourth degree felony; and upon conviction, the  
23 violator shall be fined \$100 for each line of the  
24 information that was unlawfully used?  
25 **A. Yeah, I mean, that's where my conclusion**

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1 **comes from.**  
2 Q. So there is a criminal penalty there for  
3 someone that violates that statute, both as written,  
4 as it would be written if this amendment passes?  
5 **A. Yes.**  
6 Q. I just want to go back to 1-4-5.5 that we  
7 just looked at, on page 4. Is a violation of 1-4-5.5  
8 a crime?  
9 MS. LECOCQ: Objection.  
10 **A. I know that this is being -- this is part**  
11 **of the issue that's being raised on appeal, and I**  
12 **believe that our office has taken a position that it**  
13 **is or could be. And I think that can be resolved by**  
14 **the court, if there was a determination by the court.**  
15 MR. MUELLER: Okay. I would like to  
16 propose a four-minute break. I'm going to talk with  
17 Jackson real quick, see if we have anything to clean  
18 up. And if not, we'll be done.  
19 MS. LECOCQ: Great. We'll just step out.  
20 (A discussion was held off the record.)  
21 MR. MUELLER: Okay. We can go back on the  
22 record. And if Erin agrees, I would like to ask a  
23 question about the document that you gave me. And we  
24 can do it --  
25 MS. LECOCQ: Under Attorneys' eyes.

48 (Pages 186 to 189)

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO  
3 VOTER REFERENCE FOUNDATION, LLC,  
4 Plaintiff,

5 vs. NO: 22-CV-0222 JB/KK  
6 RAUL TORREZ, in his official capacity as  
New Mexico Attorney General, et al.,

7 Defendants.

8 REPORTER'S CERTIFICATE

9 I, JENNIFER BEAN, New Mexico CCR #94, DO HEREBY  
10 CERTIFY that on March 13, 2023, the Deposition  
11 of JOSEPH DWORAK was taken before me at the  
request of, and sealed original thereof retained  
12 by:

13 Attorney for the Plaintiff  
14 MR. MATT MUELLER  
GRAVES GARRETT, LLC  
15 1100 Main Street, Suite 2700  
Kansas City, MO 64105

16 I FURTHER CERTIFY that copies of this Certificate  
17 have been mailed or delivered to all Counsel,  
and parties to the proceedings not represented  
18 by counsel, appearing at the taking of the  
Deposition.

19 I FURTHER CERTIFY that examination of this transcript  
20 and signature of the witness was required by the  
witness and all parties present. On \_\_\_\_\_ a  
21 letter was mailed or delivered Ms. Erin Lecocq  
regarding obtaining signature of the witness,  
22 and corrections, if any, were appended to the  
original and each copy of the Deposition.

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1 VOTER REFERENCE v. RAUL TORREZ, et al.

2 WITNESS SIGNATURE/CORRECTION PAGE

3 If there are any typographical errors to your  
deposition, indicate them below:

4 PAGE LINE

5 \_\_\_\_\_ Change to \_\_\_\_\_

6 \_\_\_\_\_ Change to \_\_\_\_\_

7 \_\_\_\_\_ Change to \_\_\_\_\_

8 \_\_\_\_\_ Change to \_\_\_\_\_

9 Any other changes to your deposition are to be listed  
10 below with a statement as to the reason for such  
change.

11 PAGE LINE CORRECTION REASON FOR CHANGE

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 I, JOSEPH DWORAK, do hereby certify that I have read  
the foregoing pages of my testimony as  
transcribed and that the same is a true and  
correct transcript of the testimony given by me  
20 in this deposition on March 13, 2023, except for  
the changes made.

21 \_\_\_\_\_  
22 JOSEPH DWORAK

23 (8018N) JB  
24

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1 I FURTHER CERTIFY that the recoverable cost of the  
2 original and one copy of the Deposition,  
including exhibits, to MR. MATT MUELLER is  
3 \$ \_\_\_\_\_.

4 I FURTHER CERTIFY that I did administer the oath to  
the witness herein prior to the taking of this  
5 Deposition; that I did thereafter report in  
stenographic shorthand the questions and answers  
6 set forth herein, and the foregoing is a true  
and correct transcript of the proceeding had  
7 upon the taking of this Deposition to the best  
of my ability.

8 I FURTHER CERTIFY that I am neither employed by nor  
9 related to nor contracted with (unless excepted  
by the rules) any of the parties or attorneys in  
10 this case, and that I have no interest  
whatsoever in the final disposition of this case  
in any court.

11 \_\_\_\_\_  
12 Jennifer Bean, FAPR, RMR, RDR, CRR  
13 BEAN & ASSOCIATES, INC.  
14 NM Certified Court Reporter #94  
15 License Expires: 12/31/23

16 (8018N) JB  
17 Date taken: March 13, 2023  
Proofread by: LR

50 (Pages 194 to 196)

Greg Rockstroh March 20, 2023		Defendants' Objections	Plaintiff's Response
4:23	5:4		
6:24	9:24		
10:18	11:15		
12:3	12:7		
14:6	14:12		
15:2	15:4		
16:5	16:7		
17:8	17:10		
18:7	18:9		
19:12	19:15		
20:10	20:13		
21:3	21:6	Relevance:  There is no dispute in this case regarding the feasibility of producing the data nor about the costs associated with doing so.	This testimony concerns the process the Secretary of State's office must go through to create reports in the SERVIS database, which is relevant to show that Defendants' reasoning for denying VRF's requests for New Mexico voter data are pretextual. Specifically, this testimony illustrates that the Secretary of State's office is capable of creating the requested reports and will incur no special fees or other hardships associated with creating the reports. Accordingly, there is no basis to deny VRF's request.
21:10	21:17		
21:18	21:23		
24:1	24:2		
24:11	24:18		
26:2	26:7		
27:17	27:25		
31:2	31:8		
31:13	31:16		
32:4	32:7		
34:13	36:14		
38:18	39:23		
39:24	40:11		
40:12	40:25		



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Greg Rockstroh

March 20, 2023

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Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.

1 (Witness sworn.)

2 MS. SCHREMMER: Sorry to interrupt here.  
3 I just wanted to -- hold on. I need to mute my  
4 mic here. We're in the same room. I just  
5 wanted to get some clarity. You mentioned the  
6 videographer. Are we recording this  
7 deposition?

8 MR. GREIM: No, we're not. It just shows  
9 up on my screen as videographer, but it's just  
10 the person running the call. We're not  
11 recording it.

12 MR. HOLMES: I was getting ready to hop  
13 off the line as we speak. I was just waiting  
14 until you guys get started and settled in.

15 MS. SCHREMMER: Okay. Thank you for the  
16 clarification. I'm going to mute this mic.

17 GREGORY ROCKSTROH,  
18 having been first duly sworn to tell the truth,  
19 the whole truth, and nothing but the truth,  
20 testified as follows:

21 DIRECT EXAMINATION,

22 QUESTIONS BY MR. EDWARD D. GREIM:

23 Q. All right. Well, this is to the witness.

24 Could you please state for us your full name

25 and your address?

1     **A.     Gregory James Rockstroh, 420-A Old Las Vegas**

2     **Highway, Santa Fe, New Mexico, 87505.**

3     **Q.     Okay. And your last name is spelled**

4     **R-O-C-K-S-T-R-O-H?**

5     **A.     Correct.**

6     Q.     Very good. Well, my name is Eddie Greim, and  
7           I'll be asking you questions for a pretty short  
8           time today here. I think we'll go probably  
9           about 60 minutes. If we go over, it will be  
10          only a few minutes beyond that, okay?

11    **A.     Sure thing.**

12    Q.     Mr. Rockstroh, have you had your deposition  
13           taken before?

14    **A.     No, I have not.**

15    Q.     Okay. Well, just, I'll do some ground rules  
16           with you here. I'll ask you a question, and  
17           I'll just ask you to make sure you understood  
18           it, and then I'll ask for an answer. It's a  
19           little tricky when it's remote. And so I want  
20           you to tell me right away if you didn't hear it  
21           correctly or didn't understand it. Is that  
22           fair?

23    **A.     That is, yes.**

24    Q.     Okay. And this goes for all depositions, but  
25           especially when we do it remotely, you'll need



1 to answer every question with a yes or a no for  
2 the court reporter. Okay?

3 **A. Yes.**

4 Q. Okay. Every now and then Mr. Herrera there,  
5 who is defending the deposition, may make an  
6 objection of some kind. And if he does that, I  
7 may go back and I may re-ask the question,  
8 because it may be that he's identified a flaw  
9 in the way I've asked it where when we print it  
10 out it's not going to be clear, you know, what  
11 question it is you were answering. And so if  
12 he objects, I may go back and I may ask it, but  
13 I very likely will just turn to you and say,  
14 "I'd like to have an answer, please," and then  
15 you'll just need to answer. Does that make  
16 sense?

17 **A. Yes.**

18 Q. Okay. Now, he may, every now and then, you  
19 know, make an objection and say attorney-client  
20 privilege and instruct you not to answer.  
21 We'll deal with that at the time. But I --  
22 given our subject matter today, I doubt we're  
23 going to get there. We'll see.

24 Okay. Well, with that aside, let's

25 charge into this. Could you tell us your

1 education?

2 A. Yes. I have a bachelor's in business

3 administration from the College of Santa Fe.

4 Q. Okay. What training do you have in information

5 technology?

6 A. My business administration degree was a

7 specialty in management of information

8 systems, and I've worked in technology since

9 1998.

10 Q. Since that time, have you received any other

11 training or certificates in information

12 systems?

13 A. I've not received -- I've not earned any

14 certificates in the recent past. They would

15 all predate my degree, which was 2007.

16 Q. Okay. Tell us -- let's just go from 2007 to

17 the present, just tell us your work history.

18 A. Sure. In 2007 I was hired by the Department of

19 Information Technology as an application

20 developer III, I think. I worked there for

21 approximately 18 months. I then was hired at

22 the New Mexico Aging and Long-Term Services

23 Department as a business analyst. I helped

24 implement a case management, and then moved

25 progressively through the ranks at the Aging

1 and Long-Term Services Department. Ultimately  
2 I served there for a relatively short time as  
3 chief information officer.

4 And then in 2015 I came over to the  
5 secretary of state again as an application  
6 developer. Worked predominately as business  
7 analyst and project manager, and then became --  
8 I was -- became the chief information officer  
9 acting, when the chief information officer left  
10 in August of, I think, 2019. And I've -- and  
11 was subsequently hired permanently in that role  
12 in that 2021. So my date might be off. I  
13 think it was August of 2020, I apologize.

14 Q. Who -- how many people report to you as the CIO  
15 in the SOS's office?

16 A. My direct reports are currently four.

17 Q. Okay. And are there other people under them,  
18 or do you have a total of four plus yourself in  
19 your department?

20 A. The department is ten people total. I have a  
21 deputy, and anybody who does not report to me  
22 reports to the deputy chief information  
23 officer.

24 Q. I don't have this as an exhibit, but we found a  
25 Facebook post from the official secretary of

1 state Facebook account that identifies you as  
2 the "Election Security Program Manager." Does  
3 that name ring a bell to you?

4 **A. Yes, sir.**

5 Q. Okay. Are you still the election security  
6 program manager today?

7 **A. No, I am not.**

8 Q. Okay. When did you serve in that role?

9 **A. I served in that role from 2018 until I was**  
10 **named as the acting CIO in approximately August**  
11 **of 2020.**

12 Q. What were your duties as the election security  
13 program manager?

14 **A. That it was -- it was an expansion position**  
15 **created from -- it was created in reaction to**  
16 **the election activities that had gone on in**  
17 **2016 and 2018. And the goals of it were**  
18 **largely to stay abreast of federal resources**  
19 **that were available and state resources that**  
20 **were available in the fields of cyber security,**  
21 **and to make those available to county offices**  
22 **where elections are run. And to same -- to**  
23 **similar extent, to stay on top of cyber**  
24 **security at the secretary of state.**

25 Q. Let me ask you, Mr. Rockstroh, did you take

1           some time to prepare for your deposition today?

2   **A.   Minimal.  You know, a minimal amount of time,**  
3       **yes.**

4   Q.   Okay.  Was that today or last week sometime?

5   **A.   Last Friday, I believe, and then a shorter**  
6       **amount today just in reference to some exhibits**  
7       **that were received.**

8   Q.   Very good.  And we'll turn to those in just a  
9       couple of minutes here.  Did you review  
10      anything other than the exhibits that we sent  
11      ahead in preparation for your deposition today?

12  **A.   No.**

13  Q.   And I'm not going to count your attorneys  
14      within this question, but did you interview  
15      anyone or talk to anyone to prepare for your  
16      deposition?

17  **A.   No.**

18  Q.   Are you familiar with a New Mexico, and I'm  
19      not -- I may have not use the exact term here.  
20      But are you familiar with a database maintained  
21      by New Mexico that contains voter registration  
22      data?

23  **A.   Yes.**

24  Q.   Is there a particular name or acronym for  
25      database?

1     **A.     Yes.**

2     Q.     What is it?

3     **A.     SERVIAS, S-E-R-V-I-A-S.**

4     Q.     Okay. And I'm just going to talk about the

5             architecture here for a second. And

6             that's a -- by the way, that's a term I barely

7             know the meaning of. But I'm just going to ask

8             you, first of all, is there a particular server

9             where the data in SERVIAS is housed?

10    **A.     Can you clarify "data"?**

11    Q.     Well, let's back up. Let's -- maybe you should

12             tell us what data is in SERVIAS.

13    **A.     SERVIAS consists of discrete files that are**

14             **stored, mostly PDF-type images, and then also**

15             **more traditional database.**

16    Q.     And where does the information in the database

17             come from? How does it get there?

18    **A.     When you say how does the data get there, what**

19             **are you -- I mean, what are you asking, I**

20             **guess?**

21    Q.     Let me -- okay. Let me ask you a different

22             question. What are the sources of the data in

23             the database? Let's start with that.

24    **A.     The sources of the data in the database,**

25             **there's manual entry by secretary of state**

1           personnel, as well as county personnel.  
2           There -- and that's the predominant -- that's  
3           predominant data entry. The system receives  
4           voter registrations from motor vehicles  
5           division, and it also receives voter  
6           registrations from the secretary of state's  
7           online voter registration system.

8       Q.    Okay. And so if a voter -- I'm just going to  
9           take one of those. Let's start with the  
10          secretary of state online system. If a voter  
11          registers using the online system, does the  
12          data automatically populate in the database or  
13          is manual data entry still required?

14       A.    The data is automatically transferred into the  
15          database for SERVIAS. From there, it has to be  
16          processed by a county election official,  
17          otherwise it just hangs around in an input cue.

18       Q.    Is the same thing true of the DMV data, does  
19          that come in automatically but then have to be  
20          processed by somebody else?

21       A.    That is correct.

22       Q.    And, again, is it the county election official  
23          who processes the data to make it part of the  
24          database?

25       A.    That is correct, yes.



1 Q. And if any changes are made as a result -- I'm  
2 sorry, if any changes to the SERVIAS database  
3 are made as a result of the ERIC reports, those  
4 are made by the county clerks, right?

5 **A. Yes.**

6 Q. Now, I understand that -- well, let me ask you  
7 this: Does the SERVIAS database also reflect  
8 data showing when a voter has cast a vote in an  
9 election?

10 **A. Yes.**

11 Q. And I understand that's called a credit?

12 **A. Yes, or voter credit.**

13 Q. Okay. How does the voter credit get added to  
14 the database?

15 **A. Voter credit can come from manual entry,**  
16 **typically by a county clerk. It can also come**  
17 **from data exchange where the system interacts**  
18 **with a ballot-on-demand system that is**  
19 **provided -- operated by the county election**  
20 **officials.**

21 Q. So let me go back -- now that we have a little  
22 better sense of what the data is in -- in there  
23 and how it gets added, let me ask you: Where  
24 is the data stored? Or let me -- let me strike  
25 that.

1                   Where is the database hosted?

2       **A.    The database is hosted in the state data center**  
3       **on a server owned by the secretary of state,**  
4       **owned and operated.**

5       Q.    What are your responsibilities -- and let me  
6       back up.

7                   What are the responsibilities of your  
8       office with respect to the maintenance of the  
9       SERVIAS database?

10      **A.    I understand more from the technical aspect,**  
11      **the maintenance and upkeep requirements for the**  
12      **systems in a more general sense at the office**  
13      **level.  I don't have a great deal of**  
14      **interactions or -- I've got an understanding,**  
15      **but not a great deal of interaction or**  
16      **influence on that, if that makes sense.**

17      Q.    Sure.  I mean, let's drill down.  I'm not going  
18      to go too deep into this.  But you mentioned  
19      there are some technical aspects to your work  
20      with the database.  Could you tell us what  
21      those are?

22      **A.    Yes, sir.  You know, the IT division is**  
23      **responsible for ongoing contract maintenance**  
24      **with the support vendor, that we grant access**  
25      **to the hosting infrastructure to the IT staff,**

1           we're responsible for the backup, monitoring,  
2           and protection of those -- of those systems.

3       Q.    Okay.  Let me ask you now:  Do you occasionally  
4           have to pull reports from the database?

5       **A.  My staff do pull reports that are not easily**  
6           **available in the front end as requested by the**  
7           **Bureau of Elections.**

8       Q.    What do you mean that they're not easily  
9           available in the front end?  What did you --  
10          I'm sure there's some technical answer there,  
11          but tell us, if you can.

12      **A.  That SERVIAS has reporting features built into**  
13          **it that occasionally we get questions for**  
14          **system data that isn't fulfilled by -- that's**  
15          **not fulfilled by the canned reporting that is**  
16          **available within SERVIAS, and then we will**  
17          **attempt to answer those questions directly from**  
18          **the back end.**

19      Q.    So can you give me an example of a canned  
20          report that's available from SERVIAS?

21      **A.  Yes.  There is a precinct parts and district**  
22          **report that would describe the districts -- the**  
23          **election districts within a specific county,**  
24          **and then the precinct parts that are associated**  
25          **with each of those districts.**

1 Q. Okay. Let me ask you -- and I assume that  
2 there are several -- you could give us several  
3 other examples like that of canned products  
4 that can be easily pulled from SERVIAS?

5 **A. Yes.**

6 Q. Now, if somebody wants one of those canned  
7 products, how is it accessed?

8 **A. Those products would normally come through**  
9 **voter data requests or an inspection of public**  
10 **records request.**

11 Q. Okay. And then does -- I assume that that  
12 request comes to someone within the secretary  
13 of state's office, is that right?

14 **A. Yes.**

15 Q. And does that -- is that person a staffer who  
16 reports to you?

17 **A. No.**

18 Q. Okay. Somebody within the Bureau of Elections?

19 **A. Yes.**

20 Q. And do those individuals, then, have the  
21 ability to directly access SERVIAS and pull  
22 those canned products on their own?

23 **A. Yes.**

24 Q. They don't need to go to your staff, normally,  
25 to pull those canned products off, right?

1     **A.     Yes.**

2     Q.     What if someone asked for a voter list or a  
3           list of all, you know, registered voters for a  
4           certain county, is that a canned product?

5     **A.     Yes.**

6     Q.     About how many canned products are there?

7     **A.     I'm going to guess here a little bit, but I**  
8           **would say there are between 30 and 40 different**  
9           **canned reports in the system.**

10    Q.     Who decided what reports would be canned? I  
11           mean, in other words, who came up with the idea  
12           for those 30 or 40 reports?

13    **A.     Some of -- some of the reports came as just**  
14           **part of the system from the vendor, you know,**  
15           **so a vendor when they build a system make best**  
16           **guess as to, you know -- and they're good**  
17           **guesses; they work in the space. But they make**  
18           **best guess. And then the office, in**  
19           **conjunction with county clerks, would have**  
20           **specified other things that were not -- that**  
21           **they wanted on a regular basis but were not**  
22           **included in an already covered easily by a**  
23           **canned report.**

24    Q.     Now, does the secretary of state's office,  
25           under its contract with the vendor, pay a

1 certain charge for each report that is pulled  
2 off of the canned reports?

3 **A. No.**

4 Q. So are the canned reports covered, I guess,  
5 under a fixed fee under that contract?

6 **A. I think I would describe it as just the license  
7 fee for the software.**

8 Q. Okay. Now, I take it that there are other  
9 reports -- and we may come back to this. I  
10 think we may be done with the idea of canned  
11 reports.

12 I take it there are other ways to pull  
13 data off the SERVIAS database that are not  
14 simply choosing a canned report, right?

15 **A. Correct, yes.**

16 Q. And can you give me an example? I know you may  
17 have to be creative, but maybe you can actually  
18 remember an example of a request that -- for  
19 data, that was recently made that was not a  
20 canned report. Can you think of one?

21 MR. HERRERA: Objection.

22 **A. So the question is just an example of a type of  
23 report that might need to be pulled from other  
24 means?**

25 BY MR. GREIM:

1 Q. Right.

2 **A. Recently we pulled -- we pulled a report**  
3 **regarding MVD, motor vehicles division,**  
4 **registrations that were -- it was a -- it was a**  
5 **custom report regarding MVD and whether or not**  
6 **a customer chose to register to vote at the MVD**  
7 **office.**

8 Q. So let me just -- we'll both -- take us a  
9 little bit further. It's not that important,  
10 but I want to understand. So somewhere within  
11 the SERVIAS database, it tells you how that  
12 person registered, is that right?

13 **A. Yes.**

14 Q. And it probably tells you when they registered,  
15 too, correct?

16 **A. Yes.**

17 Q. And so someone asks you to pull a report of  
18 everyone who registered within a certain time  
19 frame, how many of those were registrations  
20 through the MVD offices?

21 **A. It's close.**

22 Q. Okay.

23 **A. But, yes, that would be a good example as well.**

24 Q. Now, do you -- does the secretary of state's --  
25 let's use the example I gave. I guess it



1           wasn't -- I didn't quite meet your example, but  
2           it qualifies, so we'll stick with that.

3           Would the secretary of state's office  
4           incur a special charge from the vendor for  
5           having that data pulled?

6       **A.    No -- no.**

7       Q.    Okay.  Who -- let me ask you this:  Who goes in  
8           to pull the data when there is a special  
9           request like that?

10      **A.    Our SOS application developer would be the**  
11           **first point, and if he's unable to figure it**  
12           **out, he would escalate it to the support vendor**  
13           **for assistance.**

14      Q.    Does the support vendor at least charge you an  
15           hourly rate or something for those kind of  
16           requests?

17      **A.    Not -- no.**

18      Q.    Are there ever voter requests for data -- or  
19           let me just say:  Are there ever requests for  
20           voter data that come from the general public  
21           that the secretary of state's office refuses  
22           because they require too much data work?

23      **A.    To the best of my knowledge, no.**

24      Q.    Let me step away from this topic for a minute  
25           because there's something I forgot to ask you.

1     **A.     The system does not have any -- the system**

2     **keeps data for eternity right now.**

3     Q.    What about if somebody dies, are they also kept  
4           in there? I mean, I know they're not being  
5           kept as an active voter. But if someone dies,  
6           are they kept in there along with a column  
7           showing that they -- on such and such a date  
8           their record was changed to show that they were  
9           dead?

10    **A.    Yes.**

11    Q.    Okay. I'm going to ask you about a -- I'm  
12           going to ask you about something called a file  
13           maintenance list. Have you heard that term  
14           before?

15    **A.    Yes.**

16    Q.    What do you understand that to mean?

17    **A.    My understanding is that is a canned report**  
18    **used by county staff.**

19    Q.    What does the report reflect?

20    **A.    Without the report, I couldn't really comment,**  
21    **other than generalities.**

22    Q.    Okay. Well, let's stick with generalities. I  
23           don't -- I'm not here to drill down all the  
24           way. We'll just find out some other way. But  
25           generally speaking, is it a list that shows

1 BY MR. GREIM:

2 Q. To the voter record, okay.

3 It doesn't just keep track of the very

4 last one? It goes back in time to show other

5 changes that were made?

6 MR. HERRERA: Objection.

7 A. Yes.

8 BY MR. GREIM:

9 Q. How often is it that your staff is called upon  
10 to generate what -- I'm just going call it a  
11 non-canned report, pursuant to a request that's  
12 made?

13 A. Again, a guesstimate, and it depends on --  
14 tends to be cyclical around elections, but I  
15 would say monthly.

16 Q. About once a month on average?

17 A. Yes.

18 Q. And when one of those requests comes in, I  
19 mean, I know they're all different, but how  
20 long does it take someone from your staff to  
21 work on that and pull the data?

22 A. Often I would say several days.

23 Q. And there -- now, I'm not a computer science  
24 person at all, but I assume they're writing  
25 code or something like that?

1     **A.     Correct, yes.**

2     Q.     Now, is that several days of just working  
3             straight through or it might take several days  
4             from the time they get the assignment to the  
5             time it's completed?

6     **A.     From a receipt of assignment until completed.**

7     Q.     But maybe they're working on other projects at  
8             the same time, it's not that that matter took,  
9             say, 40 hours on average?

10    **A.     Correct.**

11                   **(WHEREUPON, Deposition Exhibit 1 was**  
12                   **marked for identification.)**

13             BY MR. GREIM:

14    Q.     I'm going to have you, if you could, look at  
15             Exhibit 1. And if you have it like I have it,  
16             it's on letter-sized paper and so the printing  
17             is rather small.

18    **A.     Yes.**

19    Q.     Okay. Now, this was produced to us by the  
20             secretary of state's office. Do you know who  
21             prepared this report within the secretary of  
22             state's office?

23    **A.     I do not.**

24    Q.     And have you seen a report like this before you  
25             looked at this document in preparation for the

1           **they could review the reporting tools.**

2       Q.    I see.  So let's break away for a second.  I  
3           want to ask you about that.  It sounds like  
4           there's an interface for SERVIAS after you log  
5           in and there's probably certain things you can  
6           click to generate the canned reports, is that  
7           right?

8       **A.    Yes.**

9       Q.    And the application then goes into the database  
10           and pulls out the data using that formula to  
11           generate the canned report, is that right?

12       **A.    Yes.**

13       Q.    That report doesn't already exist.  It's just  
14           that there is a system in place for pulling  
15           that particular data together, right?

16       **A.    Yes.**

17       Q.    Okay.  Final question and then we'll quit --  
18           you know, we'll quit trying here.  But if you  
19           go down to the table section still on the first  
20           page, fourth from the bottom is Judith Gordon,  
21           February 24, 2021, you'll see she wanted voter  
22           data for Sandoval County, precinct 132, with  
23           history for general primary municipal elections  
24           2016 to 2020.  Is that a canned report?

25       **A.    With data -- with history, yes.**

1 Q. Okay.

2 A. Produced from similar -- you set it up a little  
3 bit and it hit go.

4 Q. So when you say you "set it up a little bit,"  
5 you maybe enter in ranges and things into the  
6 SERVIAS interface?

7 A. Yes.

8 MS. SCHREMMER: Hey, Eddie?

9 MR. GREIM: Yeah.

10 MS. SCHREMMER: When you're done with  
11 this exhibit, can we take a comfort break?

12 MR. GREIM: Yeah. Why don't we go ahead  
13 and do it right now?

14 MS. SCHREMMER: Okay, thanks.

15 MR. GREIM: Okay. We'll go off the  
16 record for about ten minutes, come back on, and  
17 I expect we have about 30 minutes left at the  
18 very most.

19 (WHEREUPON, at this time a brief recess  
20 was taken.)

21 MR. HERRERA: Eddie, Greg has a  
22 clarification from his previous testimony he  
23 wants to clear up.

24 MR. GREIM: Okay.

25 THE WITNESS: In our last example, we

1 BY MR. GREIM:

2 Q. Okay. And so your testimony, then, is that  
3 what Ms. Gordon asked for technically could not  
4 be provided?

5 THE WITNESS: Can I see --

6 MS. SCHREMMER: Oh, I'm sorry.

7 **A. As asked, it can be provided by the system.**

8 BY MR. GREIM:

9 Q. It can be?

10 **A. Yes.**

11 Q. Okay. And so is it a canned report?

12 **A. Yes.**

13 Q. So the fact that, you know, this was asked for  
14 in February of '21, and by this time there  
15 might be people who have gone to jail or  
16 whatever since 2016, did not keep the secretary  
17 of state from responding to the report -- to  
18 the request, right?

19 **A. It says it was issued on February 24th of 2021,**  
20 **so, yes.**

21 Q. Right. Okay. Let me stay with you on this a  
22 little bit. The people who voted in 2016, in  
23 the general primary municipal elections in  
24 2016, who may have left Sandoval County by  
25 2021, would still actually be in the database,



1 right?

2 **A. Yes.**

3 Q. But if they left Sandoval County, their current  
4 status might show as what, inactive?

5 **A. No, their status would still be active. It**  
6 **would just be in a different county and they**  
7 **would not reflect on this report. So if I**  
8 **lived in precinct 132 in Sandoval County and I**  
9 **voted in the 2016 -- any of those elections,**  
10 **and then I moved to Santa Fe and you run**  
11 **this -- and you ask us to run this report in**  
12 **2021, I would not be reflected in that canned**  
13 **report as a participant from precinct 132 in**  
14 **that election because I don't live in precinct**  
15 **132 any longer.**

16 Q. But the database still shows -- even though not  
17 as your current address, it still shows your  
18 Sandoval County address, correct? It's still  
19 in there somewhere?

20 **A. Yes.**

21 Q. It's just that the way the canned report is set  
22 up, it's going to begin with your current  
23 county of registration?

24 **A. Yes.**

25 Q. Now, couldn't a query be run for every person

1 showing a Sandoval County registered address in  
2 the 2016 elections?

3 **A. Not from a canned perspective.**

4 Q. Right. It would require somebody on your staff  
5 maybe talking to the vendor to pull that data  
6 into a special report?

7 **A. Yes.**

8 Q. And have you ever received a request like that  
9 before?

10 **A. Yes.**

11 Q. Okay. When was that?

12 **A. I don't recall.**

13 Q. In the last five years?

14 **A. Yes.**

15 Q. Do you know who made the request?

16 **A. No.**

17 Q. Do you recall how long it took to fulfill the  
18 request?

19 **A. No. It would be a complicated -- it would be  
20 one that took somewhat longer.**

21 Q. Was there an extra charge levied on the  
22 recipient or, I guess, the requester?

23 **A. I don't know.**

24 Q. Would there still be a record of that request  
25 and the time it took to send them the data?

1 end, you'd see that I signed it. It's a  
2 request for data and a notice of violation of  
3 the National Voter Registration Act. It's  
4 dated May 27, 2022. And I take it you've seen  
5 this before just now, because you at least  
6 maybe saw it before our deposition today?

7 **A. Yes.**

8 Q. Had you seen it before then?

9 **A. No, today is the first I'd ever seen it.**

10 Q. Okay. Well, let's turn to page 4. And I'm  
11 going to show you -- there are two requests on  
12 the top of page 4. And I want to focus on the  
13 first one, which is little bit longer. And I  
14 just want you to see in writing, I'll read it  
15 into the record, but you would forget it  
16 quickly, so I think having it in front of you  
17 will help as I ask you about it.

18 The request is for, and I'm going to  
19 quote, "A complete list, by county/precinct, of  
20 any registered voters who cast a ballot in the  
21 November 3, 2020 general election, who have  
22 been subsequently placed in an inactive,  
23 canceled, deleted, removed (or any registration  
24 status other than active) status," then it has  
25 a comma, and says, "or any voter that has been

1 removed or deleted from the voter roles between  
2 November 3, 2020 and April 13, 2021, including  
3 the total counts of the same."

4 So that's what I'm going to ask you about  
5 now. This was the request that I actually sent  
6 in about -- you know, almost a year ago. So I  
7 think, you know, the structure of this request  
8 is sort of divided in half. After the word  
9 "status" in the middle, it switches over to  
10 something else. So I'm going to focus on the  
11 first part of the request and then we'll expand  
12 out, okay?

13 **A. Okay.**

14 Q. So the first part of the request probably can  
15 be viewed in two different -- has two different  
16 parts as well. You'll see the very first part  
17 wants to know a complete list, by  
18 county/precinct, of any registered voters who  
19 cast a ballot in the last general election. So  
20 if we stop right there -- I know there's more,  
21 but if we stop right there, is that a canned  
22 report?

23 **A. Yes.**

24 Q. But then, of course, it goes on. You can't  
25 just stop with the canned report. It says,

1 "...of those people who have been subsequently  
2 placed in an inactive, canceled, deleted,  
3 removed (or anything other than active)  
4 status."

5 And so my question is: With that  
6 addition, is it still a canned report?

7 **A. I'm not sure. I would need to look at the**  
8 **system.**

9 Q. Is it a report that, even if not canned, could  
10 be pulled from the system?

11 **A. Yes.**

12 Q. Okay. Then we're going to continue. Then it  
13 says "or." And so now we're going to go to  
14 something different. "...any voter that has  
15 been removed or deleted from voter roles  
16 between..." the two dates.

17 And so let me ask you: Is that a canned  
18 report?

19 **A. I'm not sure.**

20 Q. And, again, you would need to look at the  
21 system interface to know that?

22 **A. Yes.**

23 Q. But could that report be pulled from the system  
24 even if it's not canned?

25 **A. Yes.**

1           STATE OF INDIANA       )  
2    ) SS:  
3           COUNTY OF JOHNSON    )

4

5                                    CERTIFICATE

6

7                   I, Valerie Fillenwarth, RPR, a Notary  
8           Public in and for the County of Johnson, State  
9           of Indiana, maintaining an office in Johnson  
10          County, Indiana, do hereby certify the  
11          following:

12

13                   That the witness herein, GREGORY  
14          ROCKSTROH, was first duly sworn to tell the  
15          truth, the whole truth and nothing but the  
16          truth in the foregoing deposition;

17

18                   That all testimony was taken down in  
19          stenographic notes and afterward reduced to  
20          typewritten form under my direction and then  
21          presented to counsel for the purpose of  
22          obtaining the deponent's signature;

23

24                   That I recorded and transcribed any and  
25          all objections made by counsel and the reasons

1           therefore; and

2

3           That I am not a relative or employee,  
4           attorney or counsel of any of the parties, nor  
5           a relative or employee of such attorney or  
6           counsel, nor am I financially interested in  
7           this action.

8

9           IN WITNESS HEREOF, I have hereunto set my  
10          hand and affixed my Notarial Seal this 29th day  
11          of March 2023.

12

13

14

15                           Valerie Fillenwarth

16                           Valerie Fillenwarth, RPR

17                           Notary Public

18                           (Electronically signed)

19

20

21

22

23           Commission Number:   NP0669434

24           County of Residence:   Johnson

25           My Commission Expires on:   June 22, 2023



Respectfully submitted,

**GRAVES GARRETT, LLC**

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